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EXTRAORDINARY

PART II—Section 3

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No. 293] NEW DELHI, THURSDAY, DECEMBER 16, 1954

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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 16th November 1954*

S.R.O. 3560.—Whereas the election of Shri Lakheshwar, as a member of the Legislative Assembly of the State of Madhya Pradesh, from the Janjgir-Pamgarh constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mahabirprasad son of Shri Bhagirathprasad, Mouza Naila, Tehsil Janjgir, District Bilaspur (M.P.).

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAIPUR

PRESENT:

1. Shri T. R. Gosewade, District and Sessions Judge, Raipur—*Chairman*.
2. Shri M. Bajpai, Additional District Judge, Bilaspur—*Member*.
3. Shri B. R. Mandlekar, Advocate, Nagpur—*Member*.

ELECTION PETITION No. 11 OF 1953

Mahabirprasad, son of Bhagirathprasad, resident of Mouza Naila, Tahsil Janjgir, District Bilaspur, M.P.—*Petitioner*.

*Versus*

1. Shri Lakheshwar, son of Dwarkadas, resident of Mouza Naila, Tahsil Janjgir, District Bilaspur,
2. Shri Laxman Mishra, son of Late Shri Chandoolal Mishra, Medical Officer, resident of Akaltara, Tahsil Janjgir, District Bilaspur,
3. Shri Ramgopal Tiwari, son of Shri Bodhiram Tiwari, Pleader, resident of Bilaspur, Tahsil and District Bilaspur,
4. Shri Malooram, son of Nagarmal, resident of Akaltara, Tahsil Janjgir, District Bilaspur,
5. Shri Vyasnarayan, son of not known, resident of Belha, Post Belha, Tahsil and District Bilaspur—*Respondents*.

1. Shri M. R. Bobde, Advocate,  
Shri C. M. OtaIwar, Advocate,  
Shri D. B. Kolte, Pleader,  
Shri R. G. Tiwari; Pleader—*For the Petitioner.*
2. Shri R. M. Hajaranavis, Advocate,  
Shri M. S. Mendhekar, Pleader,  
Shri M. S. D. Sharma, Pleader—*For the Respondent No. 1.*

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#### ORDER

(Pronounced on this 22nd day of October, 1954)

This is a petition, presented under section 81 of the Representation of the People Act, 1951 (XLIII of 1951), challenging the election of the Respondent No. 1 Shri Lakheshwar to the Madhya Pradesh State Legislative Assembly from the Janjgir—Pamgarh constituency.

2. The bye-election from the constituency in question was held on 3rd June, 1953 for the general seat of the M.P. Legislative Assembly and the Respondents Nos. 1 to 5 were nominated candidates for the said bye-election. The Respondents Nos. 3 to 5 had withdrawn their respective candidatures by notice in writing to the Returning Officer within the time specified in that behalf. Thus the Respondent No. 1, the candidate of the Congress Party, and the Respondent No. 2, the candidate of the Praja Socialist Party, were the only validly nominated candidates who contested the bye-election in question. Respondent No. 1 polled 13,807 as against 8,215 votes polled by the Respondent No. 2, the difference being of 5,592 votes, and the Respondent No. 1 has been declared to have been duly elected by the Returning Officer of the constituency in question and the result has been accordingly published in the *M.P. Gazette Extraordinary*, dated 9th May, 1953 under section 67 of the Act. Notice under Rule 113 of the Representation of the People Rules, 1951, that the Return of Election Expenses and the accompanying declarations of the Respondent No. 1 had been lodged with the Returning Officer was also published in the *M.P. Gazette*, dated 3rd July, 1953. These facts are undisputed.

3. The case of the petitioner is that the election of the Respondent No. 1 has not been a free election and is void by reason of the illegal and corrupt practices said to have been committed by the Respondent No. 1 himself, by his agents and with his connivance by other persons and his election has been thus procured and induced and the result of the election has been materially affected by the alleged corrupt and illegal practices and that but for the said practices the Respondent No. 1 would not have secured majority of votes and the Respondent No. 2 would have been elected at the bye-election in question. The practices alleged by the petitioner are as follows.

4. Firstly, it is said that the Respondent No. 1 himself issued and widely distributed in the constituency himself, and through his agents and other persons, a pamphlet Ex. P. 1 and thereby induced the electors, a vast majority of whom are backward, illiterate and believers in Gods and Goddesses, to believe that they would be rendered objects of displeasure of Goddess Laxmi and that the fortune would forsake them and calamity would befall them if they did not cast their votes in favour of the Respondent No. 1. It was also represented by Ex. P. 1 that by casting their votes for Respondent No. 1, they would secure the blessings and protection of Gods and Goddesses and his ballot box was of Goddess Laxmi and, therefore, they should cast their votes in that ballot box.

5. Secondly, it is alleged that Shri Ganeshram Anant, Deputy Minister of M.P., Shri Reshamlal Jangde, M.P., and Shri Mulchand Jangde, Shri Kulpatsingh, Shri Vedram Kurray, Mahant Anjoredas, Mahant Naindas, M.L.As. and Shri Mahabir Kurray, all belonging to Harijan community, with the connivance of Respondent No. 1 issued a pamphlet Ex. P. 2 and got it published by the Tahsil Congress Committee, Janjgir, and the Respondent No. 1 himself and through his agents and other persons widely distributed it in the constituency in which more than one-third of the electors belong to the Harijan Community. It is said that the pamphlet Ex. P. 2 contains a systematic appeal to the Harijan community to vote for Respondent No. 1 as a community or caste and it is falsely asserted therein that the Congress Party has given to the Harijans the right of becoming members and ministers in the various legislatures and that the amenities provided by the Government and the rights given to the Harijan community were given by the Congress and it further appealed to the Harijans as a community not to vote for the Respondent No. 2. It is also contended that by signing Ex. P. 2 as

Deputy Minister, M.P., and by soliciting votes for Respondent No. 1 during his official tour as Deputy Minister, Shri Ganeshram Anant brought undue influence of his official status on the electors of the constituency to vote for the Congress candidate and the Respondent No. 1 connived at the said undue influence by the Deputy Minister.

6. Thirdly, Respondent No. 1 himself and through his agents and other persons widely distributed in the constituency the pamphlet Ex. P. 3 purporting to be a letter written by Shri Bahoriklal Suryawanshi, an *Ex-M.L.A.* and an influential personality in the constituency, and in that pamphlet Shri Bahoriklal purported to declare that they all along have been supporting the Congress Party and the people should not be misled by any other party. It is contended in this connection that the Respondent No. 1 knew that Shri Bahoriklal had subsequently resigned from the Congress Party and had stood as a candidate from the Janjgir-Pamgarh constituency in the General Elections held in 1952 on behalf of the Party of Barrister Chhedilal and Respondent No. 2 in opposition to the Congress candidate and by publishing and widely distributing the said pamphlet which contained statements which Respondent No. 1 knew and believed to be false and which were reasonably calculated to prejudice and which did prejudice the prospects of Respondent No. 2's election, induced a large number of followers of Shri Bahoriklal, who were electors in the constituency, not to cast their votes for Respondent No. 2.

7. Fourthly, the Respondent No. 1 got issued a pamphlet Ex. P. 4 by Shri Gajanand Sharma, M.L.A. and President of the Tahsil Congress Committee, Janjgir and himself and through his agents and other persons widely distributed the same in the constituency and it contained statements which the Respondent No. 1 knew and believed to be false that Respondent No. 2 and persons of his party who opposed the Congress candidate wanted to revive the *malguzari* and *zamindari* which the Congress had abolished and that calamities would befall them if they did not vote for the Congress.

8. Fifthly, it is pleaded that the Respondent No. 1 issued himself and through his agents and other persons widely distributed in the constituency a pamphlet Ex. P. 5 under the name of the Respondent No. 4 and it did not bear on its face the name of the printer thereof and it also contained imputations against the personal character and conduct of Respondent No. 2 which the Respondent No. 1 knew and believed to be false.

9. Sixthly, it is said that Respondent No. 1 obtained the assistance of one Harprasad Pande of village Banoli who is a Patel under the Government of M.P. for furthering the prospects of his election.

10. Seventhly, it is alleged that Shri Brijlal Biyani, a prominent member of the Congress and the Finance Minister of the Madhya Pradesh, addressed a Political conference at Naila on or about 25th April, 1953 which was attended by a large number of electors in the constituency and there he exhorted the electors of the constituency to vote for the Respondent No. 1 and that in case they voted for Respondent No. 2 the progress of the Five-year-Plan in the constituency was bound to be hindered and that the ballot box of Respondent No. 1 was in fact the box of the Government. It is said that the electors were thus induced in believing that they would not get the benefit of the Five-year-Plan of the Government unless they voted for the Respondent No. 1 and that Respondent No. 1 was present at the said conference and connived at the statement of the Finance Minister and allowed the electors of the constituency to be so misled.

11. On these grounds the petitioner seeks that the election of the Respondent No. 1 should be declared void and Respondent No. 2 should be declared to have been duly elected.

12. All these allegations of the petitioner have been denied by the Respondent No. 1 who alone contested the petition, the case against the other respondents who did not appear in the proceedings, having been proceeded *ex-parte*. As regards Ex. P. 1 it is contended by the Respondent No. 1 that in Chhattisgarh which includes Janjgir-Pamgarh constituency bullocks and cows are termed and called as 'Laxmi' and, therefore, even if the voters were asked to vote in the ballot box of Laxmi it did not mean that the votes were sought by arousing the religious sentiments of the electorate of the area or that the votes were sought in the name of Gods and Goddesses and it would mean that the electors were asked to vote in the box bearing the symbol 'Laxmi' i.e. bullock.

13. Secondly, it is pleaded as regards the appeal in Ex. P. 2 that the appeal, even if it was published, was a political appeal and was not addressed to a particular caste or community. It is further said that the removal of the

disabilities of the Harijans was always a plank in the political platform of the Congress Party and there was nothing wrong in the Congress Party reaffirming their policy in this behalf and in relying on their record of ameliorating the conditions of the Harijans with a view to winning their votes for the Congress Party. It is also contended in this connection that the Deputy Minister Shri Ganeshram Anant did not bring to bear any undue influence of his official status on the electors of the Constituency and he did not bring undue influence by signing pamphlet Ex. P. 2.

14. Thirdly, the issue and distribution of pamphlets Exs. P. 3, P. 4 and P. 5, as alleged by the petitioner, was also denied.

15. Fourthly, as regards the alleged appeal by the Finance Minister at a public meeting at Naila, it is said that the Five-year-Plan is the policy of the Congress Party and asking the people to express confidence in the Government and to support it in order to make the plan successful was a political exhortation and even if the allegations in that behalf were true, they could not constitute grounds for setting aside the election. It is further said that in democracy the Ministers are not only not prevented from but are required to take part in the political activities and electioneering.

16. Fifthly, it is contended that even if all or any of the facts alleged by the petitioner in paras. 9(d) and (f) of the petition are proved, they do not constitute grounds for setting aside the election.

17. The Respondent No. 1 had also contended that the petition was liable to be dismissed as it did not conform to the requirements of section 80(3) of the Representation of the People Act. We treated this contention as preliminary issue and rejected it by our order, dated 30th January, 1954 and held that there was substantial compliance by the petitioner with the sub-sections (1) and (2) of section 80 of the Act and it was not liable to be dismissed under section 90(4) *ibid*.

18. The following are the issues which arise for decision with our findings thereon:—

Issues	Findings
1. Whether the petitioner is an elector entered at number 189 in village Naila in the electoral Roll of the Janjgir-Pamgarh constituency of M.P. State Legislative Assembly?	Yes
2. (a) Whether the respondent No. 1 himself issued and widely distributed in the Constituency himself and through his agents a pamphlet Exh. P. 1?	I—Part : No. II—Part : No.
(b) Whether thereby he induced the electors of the said constituency to believe that they would be rendered objects of displeasure of Goddess Laxmi and that fortune would forsake them and calamity would befall them, if they did not vote in favour of the respondent No. 1?	I—Part : No. II—Part : No.
(c) Whether the respondent No. 1 and his agents with his connivance induced the electors of Constituency to cast their votes in favour of respondent No. 1 by asserting by Exh. P. 1 that they would thus secure the blessing and protection of the Gods and Goddesses and that his ballot-box was the ballot-box of Goodness Laxmi and that they should cast their votes in the ballot-box of Goddess Laxmi?	I—Part : No. II—Part No.
(d) Whether a vast majority of the electors of the Constituency are backward, illiterate, religious-minded and believe in Gods and Goddesses like Brahma, Vishnu, Mahesh, Ganes, Bhawani & Laxmi?	Yes.
3. (a) Whether Shri Reshamalal Jangde M.P., Shri Ganeshram Anant, Deputy Minister, Mahant Anjor Das M.L.A., Mahant Nain Das, Shri Mulchand Jangde, Shri Kulpat Singh, Shri Ved Ram M.L.As. of M.P. and Shri Mahabir Kurre of village Kataud, all belonging to Harijan Community of the Constituency that the Harijans as a Community or caste should vote for respondent No. 1?	No.
(b) Whether they did so by falsely asserting that it was the Congress Party which had given to the Harijans the right of becoming members and Ministers in the various legislatures and that the amenities or the rights provided by the Government for the Harijan communities were given by the Congress?	No. The appeal did not contain any false assertions.

Issues	Findings
(c) Whether they thus appealed to the Harijans as a community not to vote for respondent No. 2 ?	Yes.
(d) Whether they did all this with the connivance of respondent No. 1 ?	No.
4. (a) Whether Shri Ganesh Ram Anant by an appeal and by soliciting votes for respondent No. 1 during his official tour as Deputy Minister brought undue influence of his official status on the electors of the Constituency to vote for respondent No. 1 ?	No.
(b) Whether the respondent No. 1 has connived at the said undue influence by Shri Ganeshram Anant ?	No.
5. (a) Whether the respondent No. 1 himself and through his agent widely distributed in the constituency a pamphlet Exh. P. 3 ?	No.
(b) Whether it purports to be a letter written by Bahoriklal Suryabanshi ?	Yes.
(c) Whether Shri Bahoriklal Suryabanshi is Ex M.L.A. and influential personality in the Constituency ?	I—Part : Yes. II—Part : No.
(d) Whether in the said letter Exh. P. 3 said Shri Bahorik Lal purported to declare that he was all along supporting the Congress Party and the people should not be misled by any other Party ?	Yes.
(e) Whether the respondent No. 1 knew that said Shri Bahoriklal has subsequently resigned from Congress Party and that he stood as a candidate from the Janjgir-Pamgarh Constituency in the General Election held in 1952 on behalf of the Party of Barrister Chhedilal and respondent No. 2 in opposition to the Congress candidate in the said General Election ?	No.
(f) Whether the statements contained in Exh. P.3 were known and believed to be false by respondent No. 1 and whether they were reasonably calculated to prejudice and in fact prejudiced the prospects of the election of respondent No. 1 ?	I—Part : No. II—Part : No.
(g) Whether thereby a large number of the followers of Shri Bahoriklal who were the electors of the Janjgir-Pamgarh Constituency were induced not to cast their votes for respondent No. 2 ?	No.
6. (a) Whether the respondent No. 1 got issued a pamphlet Exh. P. 4 by Shri Gajananand Sharma, M.L.A. and President Tahsil Congress Committee, Janjgir and himself and through his agents and other persons widely distributed the same in the Constituency ?	I—Part : No. II—Part : No.
(b) Whether the said Pamphlet Exh. P-4 contains statements which the respondent No. 1 knew and believed to be false ?	No.
(c) Whether the pamphlet Exh. P. 4 contains statement that the respondent No. 2 and persons of his party who opposed the Congress candidate wanted to revive the <i>malguzari</i> and <i>zamindari</i> which the Congress had abolished and that calamities would befall on the people if they did not vote for the Congress ?	Yes.
7. (a) Whether the respondent No. 1 issued and himself and through his agents widely distributed in the Constituency a pamphlet Exh. P. 5 under the name of Shri Maloo Ram, respondent No. 4 ?	I—Part : No. II—Part : No.
(b) Whether the said pamphlet did not bear on its face the name of the printer thereof ?	No.
(c) Whether it contained, <i>inter alia</i> , imputations against the personal character and conduct of the respondent No. 2 ?	No.
(d) Whether the respondent No. 1 knew and believed those imputations to be false and whether they were calculated to induce the electors of the constituency not to vote for the respondent No. 2 by threat of a fast ?	I—Part : No. II—Part No.
8. (a) Whether the respondent No. 1 obtained the assistance of Shri Harprasad Pande of village Banati for furthering the prospects of the election ?	No.

Issues	Findings
(b) Whether said Shri Har Prasad Pande was a Patel under the Government of M.P. at the relevant time ?	Yes.
9. (a) Whether Shri Brijlal Byani, Finance Minister M.P. addressed a political conference at Naila on or about 25-4-1953 and whether the said meeting was attended by a large number of electors in the Constituency ?	Yes.
(b) Whether the Finance Minister, Shri Brijlal Byani exhorted the electors to vote for the Congress candidate <i>i.e.</i> for the respondent No. 1 and in case they voted for the non-congress candidate, <i>i.e.</i> for respondent No. 2, the progress of the Five-Year Plan in the Constituency was bound to be hindered and the ballot-box of respondent No. 1 was in fact the box of the Government ?	I—Part : Yes. II—Part : No. III—Part : No.
(c) Whether the electors of the Constituency were thus induced in believing that they would not get the benefit of the Five Year Plan of the Government unless they voted for the respondent No. 1 ?	No.
(d) Whether the respondent No. 1 was present at the said conference and meetings and connived at the said statements of Shri Brijlal Byani and allowed the electors of the Constituency to be so misled ?	I—Part : Yes, at some meetings. II—Part : No. III—Part : No.
10. Whether any of the facts contained in issues Nos. 1 to 9 constitute grounds under section 100 of the representation of People Act of 1951 and amount to corrupt and/or illegal practises within the meaning of sections 123 to 125 of the Act ?	I—Part : No. II—Part : No.
11. (a) Whether the election of respondent No. 1 should be declared void ?	No.
(b) Whether respondent No. 2 be declared to be duly elected under section 101 of the Act ?	Does not arise.
12. Relief and Costs ?	Petition dismissed as ordered.

#### REASONS FOR THE FINDINGS

19. Before we commence the consideration of the issues involved in the case, it is necessary to advert to the nature of these proceedings and the quality of the proof required in the case. Regarding the nature of the proceedings we quote the following observations of the Supreme Court in *Jagannath Vs. Jaswantsingh* (A.I.R. 1954 S.C. 210 at page 212):—

“The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that a success of a candidate who has won at an election should not be lightly interfered with and any petition seeking any such interference must strictly conform to the requirements of the law. It is always to be borne in mind that though an election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices.”

20. Regarding the nature of the proof required in the case we wish to observe that the inquiry in election cases being of a quasi-criminal character, a rigid proof is required from a person bringing the charge to prove his case beyond all reasonable doubt; but that does not fully exonerate the person charged with corrupt practices from producing evidence, especially evidence, in proof of facts within his special knowledge. In the light of these principles we will now proceed to consider the issues in the case.

21. Issue No. 1.—The document Ex. P. 9, which is certified copy of serial No. 189 in the Electoral Roll for the year 1950 of the Madhya Pradesh Legislative Assembly relating to village Naila, revenue inspector circle Janjgir, P.C. No. 38,

in Tahsil Janjgir of the district of Bilaspur. It shows petitioner Mahabirprasad son of Bhagirathprasad as elector. To rebut this evidence no contrary evidence has been adduced. It is, therefore, proved that the petitioner is an elector entered at No. 189 in village Naila in the Electoral Roll of Janjgir-Pamgarh constituency of the M.P. State Legislative Assembly. He is, therefore, entitled to make the petition in question under section 81 of the Representation of the People Act, 1951, and we find accordingly.

22. *Issues Nos. 2(a), 3(d), 5(a), 6(a) and 7(a).*—These issues relate to the issue and distribution of the pamphlets Ex. P. 1 to Ex. P. 5 in this case by Respondent No. 1 or by his agents or by other persons with his connivance. We will first take up the question whether these pamphlets were got printed by the Respondent No. 1 himself or by some other person under his authority or with his knowledge. The petitioner has examined in this respect Shyamnarain (P.W. 4), Manager, Shri Krishna Press, Bilaspur, and Chandramohandas (P.W. 5), Accountant, Mahakoshal Press, Raipur, Janakram (P.W. 23), the owner of Bharat Printing Press, Raigarh.

23. According to Shyamnarain (P.W. 4), Order No. 596, dated 13th April, 1953 of his Press shows an order in the name of Shri Lakheshwar Paliwal booked through one Bisahu Paliwal for printing of voters' slips 15,000, one pamphlet double demi size 1,000 in the name of Paliwal, a hand-bill '*Harijan Bhaiyo Saadhan*', 1,000 copies in double demi size, and a handbill regarding '*Bahorik Suryawanshi Ka Patra*', 1,000 copies in double demi size, and this order was for Rs. 69. Similarly, he further stated that Order No. 595, dated 13th April, 1953 of his Press is an order from Tahsil *Chunao Morcha* through Bisahu Paliwal in respect of 2,000 copies in double demi newsprint, of an election pamphlet and its cost was Rs. 22. But the description of the contents of that pamphlet has, according to him, been left out in the order-book probably through mistake.

24. He has also stated that counterfoil Receipt No. 641, dated 30th April, 1953, shows that payment of the balance of Rs. 12 on account of Order No. 595 was made and the receipt was made and the receipt was issued in the name of Shri Lakheshwar Paliwal, although he could not say who actually made the payment. The counterfoil Receipt No. 642, dated 13th April, 1953, according to him, shows that the said receipt was issued in the name of Shri Lakheshwar Paliwal for Rs. 69 as payment for Order No. 596.

25. This evidence only shows that some printing work was done in April 1953 in the Shrikrishna Press, Bilaspur, under an order booked in the name of Respondent No. 1 Shri Lakheshwar Paliwal and an order in the name of *Tahsil Congress—Chunao Morcha*, both these orders being through Bisahu Paliwal. But Bisahu Paliwal, who is the brother of Respondent No. 1, has not been examined. The description given in these orders, as stated by Shyamnarain (P.W. 4) appears to relate to only the pamphlet Ex. P. 3 which bears the name of Shrikrishna Press, Bilaspur, out of the pamphlets Exs. P. 1 to P. 5.

26. But when this pamphlet Ex. P. 3 was shown to Shyamnarain (P.W. 4), he could not say definitely whether it was or was not printed at his Press, obviously because the original documents given for printing in his Press under the orders referred to above do not exist and, as stated by him, they are destroyed. Shyamnarain does not say that one of those originals, which he must have seen, contained the same contents as Ex. P. 3 contains and no other person who could say so has been examined by the petitioner. There is, therefore, no proper secondary evidence on record of the contents of the original documents received by Shyamnarain or by his Press for printing under the orders referred to by him, or of the handwriting and signatures existing on those originals. Thus all that his evidence proves is that some matter, the contents of which are not known, was printed in the Shrikrishna Press, Bilaspur, in April 1953 under the orders mentioned above and it does not connect either the Respondent No. 1 or his agent or some other person with the connivance of Respondent No. 1 with the printing of the pamphlet Ex. P. 3 or any other pamphlet in question.

27. Coming now to the evidence of Chandra Mohandas (P.W. 5), Accountant, Mahakoshal Press, Raipur, he says that the Ledger Book of his Press of 1953, maintained and written by him, contains the account of the Mahakoshal Press from January 1953 to the end of December 1953 and the orders are mentioned in the Bill Collection Register and this is the only record of the orders available in the Mahakoshal Press, Raipur. But, as he says, he cannot say anything about the nature of the matter printed and mentioned in the entries of this bill collection register under the dates 4th April, 1953 and 14th March, 1953 relating to bills Nos. 1380-1381 and 1339 in the name of the District Congress Committee, Raipur. He further stated that payment was made of Rs. 60 on 3rd June, 1953 as shown in the Ledger Book at page 64 relating to Order No. 1339 (which is wrongly mentioned as 1396) and Order No. 1449. He also says that on 22nd May,

1953 there is recorded in the Cash Book as well as in the Ledger Book receipt of Rs. 132 in the name of Janjgir and he cannot say when the order regarding this payment was placed and by whom it was placed. According to him, the original orders of unpaid bills are also not in existence as they have been destroyed.

28. This evidence does not connect either the Respondent No. 1 or his agent or any other person with his connivance with the printing of either the pamphlet Ex. P. 2, which bears the name of Mahakoshal Press, Raipur, presumably as its printer, or any of the other pamphlets in question. According to Chandramohandas, he cannot say whether pamphlet Ex. P. 2 was really printed or not at the Mahakoshal Press, Raipur, evidently because the original documents which were received by the said Press for printing under the orders referred to by him are not in existence. There is, therefore, no proper secondary evidence on record of the fact alleged by the petitioner that the pamphlet Ex. P. 2 is the copy of the original signed or authorised or connived at by the Respondent No. 1. In the absence of any such evidence, the responsibility of the issue and distribution of the pamphlet Ex. P. 2 filed by the Petitioner cannot be fastened on the Respondent No. 1.

29. We will now consider the evidence of Sitaram Modi (P.W. 3) of Raigarh who is a co-owner along with his brother of the Bharat Printing Press, Raigarh. Regarding Ex. P. 1 which bears the name of Bharat Printing Press, Raigarh, he says that it has not been printed at his press as there is no entry regarding the printing of such pamphlet either in any order book or bill-book. He, however, admits that Shri Lakheshwar, his brother-in-law, got some matter printed at the Bharat Printing Press, Raigarh, for purposes of election and his bill book at page 194, a carbon copy of the original bill, issued in the name of Shri Lakheshwar Paliwal, shows the order for printing of nine kinds of pamphlets, the total number being 10,000, and he has produced those nine kinds of pamphlets Exs. P. 10 to P. 18. But according to him, the contents or the subject matter of the pamphlets are not noted in the said bill and the same type of entry appears in the order book and the Order No. 214, dated 8th April, 1953. As he says, the original manuscripts have been destroyed, as is customary in his press regarding the originals about which there is no doubt as to their genuineness. He also stated that in respect of the bye-election in question only these nine pamphlets were printed at his Press. His Press, as he says, has been printing pamphlets for the Congress Party also and the manuscripts of those pamphlets produced by him were in the handwriting of Shri Lakheshwar Paliwal.

30. In his cross-examination he further stated that even the type used in the pamphlet Ex. P. 1 is not of his Press. Thus his evidence which we see no reason to disbelieve proves only the fact that some election matter was got printed by the Respondent No. 1 at his Press but that Ex. P. 1 or any other pamphlet in question was not printed at his press.

31. Coming now to the evidence of Janakram (P.W. 21) it is an admitted fact that he was once sent to Raigarh by the Respondent No. 1. But Janakram says that Respondent No. 1 had sent him to Raigarh with a letter which he delivered to Shri Baijnath Modi and on reading that letter, he gave him a bundle of pamphlets and he then delivered that bundle on the next morning to the Respondent No. 1 at Naila. He has further stated that in his presence that bundle was opened and there were pamphlets in it of reddish colour having two pictures of bullocks. He is illiterate; but on Ex. P. 1 being shown to him he said that those pamphlets which he carried from Raigarh to Naila were like this.

32. The version of the Respondent No. 1 on the contrary is that he had sent Janakram to Raigarh to get a motor vehicle from Shri Baijnath Modi. The question, therefore, is which of these two versions should be believed. Janakram appears to be interested against the Congress organisation, because, as admitted by him, at the recent Janapada elections 3 or 4 months before he gave evidence, he sought election on an independent ticket against the Congress candidate. Besides, it is interesting to note, as stated by him, that he came to Bilaspur not to appear as a witness in this case but to offer himself as surety for his uncle in a Criminal case and a day previous to his evidence when he went to the Court premises, the petitioner met him and asked him to give evidence and to say whatever he knew. It is also significant to note that this witness had admittedly come to Bilaspur a day or two previous to the day of his evidence with Shri Ratansingh, Advocate, who is a leader of the P.S.P. and he became prepared to give evidence, though admittedly he has not been paid anything as diet money by the petitioner. It is difficult to believe the version of such an interested witness.

33. Curiously enough, he has stated that only because the pamphlet Ex. P. 1 contains two pictures of bullocks and is of faint reddish hue he says that this was the pamphlet, the bundle of which he brought from Raigarh. This is



evidently absurd. We are not, therefore, inclined to believe the version of this man who appears to have come deliberately to give false evidence against the Respondent No. 1. It appears that though he was serving the Respondent No. 1 at the time of the election in question, subsequently he fell out with him and appears to have gone in enemy camp. Thus, for all these reasons, we hold that his evidence is unreliable. His version that he carried from Raigarh to Naila and handed over a bundle of pamphlets containing pamphlets like Ex. P. 1 is, in our view, false, and the contrary version of the Respondent No. 1 appears to be true.

34. Section 62 of the Evidence Act defines Primary evidence and its Explanation 2 clearly lays down that where a number of documents are all made by one uniform process, as in the case of printing etc. and where they are all copies of a common original, they are not primary evidence of the contents of the original and the illustration given thereunder makes this absolutely clear. The pamphlets in question cannot, therefore, be regarded as primary evidence of the contents of the originals of which they are said to be copies. The contents of the originals in question are, therefore, required to be proved by secondary evidence. But, there is no proper secondary evidence on record of the fact alleged by the petitioner that the pamphlets he has filed are the copies of the originals signed or authorised or connived at by the Respondent No. 1. In the absence of such evidence, the responsibility for the issue and publication of pamphlets filed by the petitioner cannot be fastened on the Respondent No. 1.

35. This view is supported by the decision of the Election Petitions Commission, U.P. in *Mohamed Ashik Husain Khan Vs. Mohamed Ismail* and another, reported in the Indian Election Cases, Vol. II, by Doabia at page 335, where in order to prove an objectionable article purporting to have been signed by a religious head, the newspaper containing it was produced but the original manuscript was not produced on the ground that it was lost and it was held that the article published in the newspaper might be accepted as a secondary evidence of the original manuscript but it can certainly not be regarded as secondary evidence of the fact that the original manuscript was signed by a particular person alleged to have signed it or issued under his authority. A similar view has been taken in many other cases decided by other Election Commissions or Tribunals.

36. Thus, the evidence of the two witnesses belonging to the printing Presses in which the pamphlets in question are alleged to have been printed does not in fact show who was the author of the pamphlets in question or under whose directions they were printed. Thus the authorship of the pamphlets in question is unknown in this case.

37. In an English case decided by the Queen's Bench Division, *Bettesworth Vs. Allingham* (Vol. XVI, Queen's Bench Division, 44), it was proved that the appellant *Bettesworth* was a candidate for a seat in the Local Board of Willesden; that the respondent received from his own servant at his residence a printed address and letter having reference to the election and purporting to be signed by the appellant, but without the printer's name and address thereon; that this document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him; and that the printer had debited the appellant with the cost of printing, but had not been paid. On this evidence it was held therein that it was not proved that the appellant printed or caused to be printed the document in question.

38. In that English case the author of the document in question was known and yet it was held that the person charged had no connection with the printing of the document. That case was thus much stronger than the present case in which the author of the pamphlets in question is not known.

39. The Respondent No. 1 in his evidence as R.W. 1 totally denied that he issued or got issued any of the pamphlets in question. *Shri Reshamlal Jangde*, M.P., *Shri Vedram*, *Mahant Anjordan* and *Mahant Naindas* and *Shri Ganeshram Anant*, Deputy Minister, M.P. (P.W. 25 examined on commission) also deny that they signed the original of the pamphlet Ex. P. 2 or that they authorised anybody to sign or publish it on their behalf. Similarly, *Maluram Kedia* (P.W. 6) denies that he got printed the pamphlet Ex. P. 5 which bears his name.

40. It cannot, therefore, in our opinion, be said from the type of evidence adduced by the petitioner on the question of authorship of the pamphlets in question that they were got printed by or at the instance or with the connivance of the Respondent No. 1. It is, however, true that the petitioner had difficulty in the production of the original documents in question because they were in possession or control of either the opponents or third persons. But the burden of proof being on him, it could not be discharged by merely showing that there was difficulty in adducing the necessary legal proof.

41. It was, however, argued by the learned counsel of the petitioner that it was inconceivable that the Respondent No. 1 fought the election in question without publishing and distributing some pamphlets for the purpose of canvassing and, therefore, he ought to have produced the copies of the pamphlets which were published and distributed in the Constituency by him or at his instance in order to show that the pamphlets in question were not distributed by him. Even if he had produced those pamphlets, the matter would have still remained doubtful, because there was possibility that he might include in those pamphlets some which were not used in the election in question. Such a contention was rejected as incorrect by the Election Tribunal, Bihar, in *Jadunandan Mahtoon Vs. Mosahib Singh and Others*, reported in Vol. I of Indian Election Cases by Doabia at page 46.

42. In any case, the evidence adduced by the petitioner does not lead us to anything more than suspicion regarding the issues of pamphlets Ex. P. 1 and P. 2 by Respondent No. 1 and other pamphlets in question with his authority or connivance. It is well settled that suspicion is no proof and, therefore, after giving our earnest consideration to the question of the issue or authorship of the pamphlets in question, we have come to the conclusion that the petitioner has failed to prove that the pamphlets in question were got printed either by Respondent No. 1 or by his agents or by any other person at his or his agent's connivance, and we find accordingly.

43. Coming now to the question of distribution of the pamphlets in question by Respondent No. 1, his agents, or by other persons with his connivance, it is very pertinent to note that only one pamphlet of each of the five kinds could be produced before the Tribunal from a constituency of about 50,000 voters. It is also significant to note that the petitioner himself has not entered the witness box and has not, therefore, disclosed to the Tribunal from whom he secured the five pamphlets in question. He has not even examined any of such persons. None of the 16 persons examined by him regarding the distribution of the pamphlets in question, produced before the Tribunal other copies of the pamphlets

44. No evidence has also been adduced by the petitioner that the defeated candidate Shri Jwalaprasad who keenly contested the election ever tried to refute the allegations made in the pamphlets in question, either by issue of pamphlets or by speeches. The petitioner has not even cared to examine Shri Jwalaprasad in order to show that these pamphlets, which are said to have turned the scales against him, had come to his notice. Shri Jwalaprasad's evidence on this point would have been the best evidence. But, the petitioner has failed to adduce it. It is in this background that the oral evidence of the distribution of the pamphlets in question requires to be considered.

45. There is also divergence between the petitioner's pleading and evidence regarding the dates on which and the places at which the pamphlets in question were said to have been distributed. The following are the dates and places of the different pamphlets according to the pleading:—

Date	Place	Pamphlet distributed.
20-4-53	Bhainoo . . . . .	} Ex. P. 1 and Ex.P. 3.
	Kosa . . . . .	
	Konar . . . . .	
	Mulmula . . . . .	
21-4-53	Pamgarh . . . . .	} Do.
	Meu . . . . .	
	Bhiloni . . . . .	
	Donga-Kohroud . . . . .	
23-4-53	Rehoud . . . . .	} Do.
	Kodabhat . . . . .	
	Kosla . . . . .	
	Bundela . . . . .	
29-4-53	Shivrinarain . . . . .	} Ex <sup>a</sup> . P.1, P.2, P. 3, P.4, and P. 5.
	Kharod . . . . .	
	Loharsi . . . . .	
	Salkhan . . . . .	
30-4-53	Godhna . . . . .	} Do.
	Katond . . . . .	
	Pendri . . . . .	
	Udebhanta . . . . .	
	Misda . . . . .	
	Kera . . . . .	

Date	Place	Pamphlet distributors
1-5-53	Mahant Amora . . . . .	Exs. P. 1, P. 2, P. 3, P. 4 and P. 5.
	Khokhra . . . . .	
	Munun . . . . .	
	Janygir . . . . .	
2-5-53	Naila . . . . .	Do.
	Bodsara . . . . .	
	Seoni . . . . .	
	Sarkhon . . . . .	
	Banari . . . . .	
27-4-53	Bhainso . . . . .	Exs. P. 2, P. 4 and P. 5
	Kosa . . . . .	
	Konar . . . . .	
	Mulmula . . . . .	
	Pamgarh . . . . .	
	Meu . . . . .	Do.
28-4-53	Bhiloni . . . . .	
	Donga-Kohroud . . . . .	
	Rahoud . . . . .	
	Kodabhar . . . . .	
	Kosla . . . . .	
	Bundela . . . . .	

46. But at village Rahod, according to Tejram (P.W. 7), of Rahod, who was a canvasser of the Respondent No. 2 till about a fortnight before the polling, the pamphlet Ex. P. 1 was distributed about 15 days before the Polling, while regarding Ex. P. 2 he says it was distributed about five or seven days before the polling. Similarly, Jainarayan (P.W. 19) of Rewapar, who was also a canvasser of Respondent No. 2, says that pamphlet Ex. P. 1 was distributed at Rahod about a week before the polling.

47. About village Bundela, Tejram (P.W. 7) is the solitary witness regarding distribution of pamphlet Ex. P. 1 about a fortnight before the polling. Regarding village Salkhan also he alone stated that about 10 or 12 days before polling, pamphlets Exs. P. 1 to P. 5 were distributed.

48. In respect of village Bhiloni there were two witnesses Radheshyam (P.W. 8) and Kapilnath (P.W. 11) and according to both of them the pamphlet Ex. P. 1 was distributed in their village about a fortnight before the polling. But they do not speak of distribution of other pamphlets in question.

49. Regarding villages Sarkhon, Kharaud, Seoni, Banari, Mahant, Mulmula, Kosa and Kosla, there is only one witness for distribution of pamphlets in each of these villages. Aghori (P.W. 9) of Nariyara, who speaks about distribution of Ex. P. 1 at village Sarkhon, says that only one person in a village of 50 or 60 families of his Teli caste, showed him, about 8 or 10 days before the polling, a pamphlet like Ex. P. 1 and that person was a child. About Kharaud, Kalaram (P.W. 10) stated that about 8 or 10 days before the actual polling the pamphlet Ex. P. 1 was distributed in his village. But these two persons do not say about distribution of other pamphlets in question.

50. Concerning village Seoni, Dharaiatta (P.W. 12) says that Ex. P. 1 and Ex. P. 2 were distributed about 8 days before the polling; but he does not say about the distribution of other pamphlets in question. Regarding village Banari, Pram Nath (P.W. 13) says only about the distribution of pamphlets Ex. P. 1 to P. 3, three or four days before the date of polling. But he does not speak of distribution of pamphlets Exs. P. 4 and P. 5. About village Mahant, Yognidhi (P.W. 14) says that Ex. P. 1 pamphlet was distributed a week before polling, while pamphlets Exs. P. 2, P. 3 and P. 5 were distributed about three or four days before polling.

51. About village Mulmula, Pachkodprasad (P.W. 16), who canvassed for respondent No. 2 during the bye-election in question, says that pamphlets Ex. P. 1 and Ex. P. 2 were distributed about a week before the polling. Regarding Kosa, Makund Singh (P.W. 17) states that pamphlets Ex. P. 1 and Ex. P. 2 were distributed about a week before the polling. Similarly, regarding Kosla, Motilal (P.W. 18) states that the pamphlets Ex. P. 1 and P. 2 were distributed about a week before the polling.

52. Thus, there is great variance between the pleading and the evidence as regards the dates of the distribution of the pamphlets in question at the villages

mentioned above. Besides, there is no pleading about distribution of pamphlets at villages Tilai and Nandeli. Yet Purshottamprasad (P.W. 15) of Tilai, who was canvassing for the Respondent No. 2, stated that three or four days before the polling two types of pamphlets were distributed in his village and pamphlets Exs. P. 1, P. 2 and P. 5 were found by him with the people in village Tilai. Similarly, P.W. 16 Pachkodprasad, who also canvassed for the Respondent No. 2, says that at Nandeli he saw the pamphlet Ex. P. 2 distributed and affixed on walls.

53. Regarding the evidence of distribution of pamphlets in village Tilai and Nandeli, about which there is no pleading, the petitioner's learned counsel contends that the said evidence is admissible under section 8 and 11 of the Evidence Act. But we do not accept this contention and we cannot overlook the difference between pleading and evidence. Besides the divergence between pleading and evidence, some of the persons like Madanlal of Jhulan, Gumangir of Nariyara, Ramkhilawan of Kosla and Mohanlal of Janjgir, whose names have been mentioned in the particulars given by the petitioner as Respondent No. 1's agents and as those who distributed the pamphlets in question, have not been examined by the petitioner. Such evidence was expected from him. The inability of the petitioner to adduce such evidence indicates that those persons were not prepared to support the petitioner's version. This inference receives support from the fact that Madanlal of Jhulan (R.W. 5), one of the persons who were said to have distributed the pamphlets in question, does not support the petitioner and supports the Respondent No. 1.

54. Coming now to the quality of the evidence of the 16 persons, who have been examined by the petitioner to prove the distribution of the pamphlets in question at different places in the constituency, it is pertinent to note that many of these persons either belong to the Praja Socialist Party or they are connected with persons belonging to that Party. As already indicated, Tejram (P.W. 7) was admittedly working for the Praja Socialist Party till about a fortnight before the polling. He is also related to respondent No. 2 as his nephew. Deonarayan of Kharaud is, as admitted by him, Respondent No. 2's *samdhi*. Said Deonarain, as stated by him, is a member of the Janapada on the Praja Socialist Party side and, as admitted by this witness, he was present in Court premises when he was giving evidence. It is, therefore, clear from his evidence that he is more interested in the Praja Socialist Party and has come forward to support the cause of his relation Respondent No. 2, the defeated candidate. His evidence is consequently unreliable.

55. Similarly, Radheshyam (P.W. 8) admitted that he was working for the Praja Socialist Party and only at the request of his cousin Madanlal he ceased working for the Praja Socialist Party and started working for the Congress. It is, however, significant to note that his cousin Gajanan Gurha of Miyo, who is a Member of the Janapada on P.S.P. ticket was admitted by this witness present in court premises when he was giving evidence. This witness, therefore, is evidently interested in the cause of the defeated candidate, Respondent No. 2 and is not worthy of belief.

56. Aghoriram (P.W. 9) admittedly left the Congress and joined the Praja Socialist Party when Respondent No. 2 and Thakur Chhedilal left the Congress and he continues to be member of the Praja Socialist Party. As has been already stated he has made a curious statement that the pamphlet Ex. P. 1 was shown to him only by a child in a village containing 50 or 60 families of his caste. It cannot, therefore, be believed that he canvassed during the election in question for the Congress candidate, Respondent No. 1. His story of the distribution of pamphlets is consequently extremely unconvincing.

57. Kalaram (P.W. 10) says that the workers of the Praja Socialist Party, when their attention was drawn to the contents of Ex. P. 1, said that it was a matter of individual opinion and that they had to say nothing about those contents. Such a version is, on the face of it, improbable. He is a person who says he would be prepared to transfer all his property to anyone who tells him that Laxmi would forsake him in case he did not do so. He has thus gone to the length of making such an absurd and unbelievable statement. Deonarayan, *samdhi* of Respondent No. 2, who was elected to the Janapada on the Praja Socialist Party ticket, is an *ex-mul-guzar* of village Kharaud to which this witness belongs. Thus, the evidence of this witness is interested and unconvincing.

58. Similarly, Kapilnath (P.W. 11) of Bhiloni is related to the Respondent No. 2 and also to Shri Gajanan of Miyo who is member of the Janapada on the P. S. P. ticket. He appears, therefore, to have come forward to support the

cause of his relation. Dharamdatta (P.W. 12) of Seoni has also come forward to support the petitioner because, as admitted by him, the petitioner is a Chairman of the Nyaya Panchayat, Naila, of which he is a member. This witness was convicted of adultery in the year 1934 as the document Ex. D. 1 shows but he stoutly denied that fact and stated that he was not aware of any such case. It is difficult to believe the version of such a witness, who has no regard for truth.

59. Prannath (P.W. 13) is also a member of the Nyaya Panchayat, Naila, of which the petitioner is the Chairman. For this reason, he appears to have come forward to support the petitioner. Yoganidhi (P.W. 14) of Anwarid, who was admittedly working for the Respondent No. 2 at the bye-election in question, says that he informed Respondent No. 2 and other P. S. P. leaders about the distribution of pamphlet Ex. P. 1 and also of the pamphlet regarding Harijans. He also says that he gave the petitioner one or two such pamphlets. But the petitioner himself has not come forward to corroborate him and has not examined Respondent No. 2 or other Praja Socialist Party leaders who were said to have been informed by Yoganidhi about the distribution of the pamphlets Exs. P. 1 and P. 2. The interested and uncorroborated testimony of Yognidhi cannot, therefore, be believed. Similarly, the evidence of Purshottamprasad (P.W. 18) is interested and uncorroborated. He admittedly belongs to the P. S. P. and canvassed for the Respondent No. 2. His version regarding distribution of pamphlets cannot, therefore, be believed.

60. Pachkedprasad (P.W. 16) is, as admitted by him, a relation of Respondent No. 2 and sometimes he stays with Thakur Chhedilal when he visits Bilaspur. He was convicted of possession of *ganja* at Rameshwaram and he admittedly canvassed during the bye-election in question for Respondent No. 2. His evidence is also uncorroborated regarding distribution of pamphlet at village Nandeli. For these reasons the evidence of this witness who appears to be a man of doubtful character, is unreliable.

61. Makundisingh (P.W. 17) was also admittedly canvassing for Respondent No. 2 and is a relation of Thakur Chhedilal. His evidence regarding distribution of pamphlets at village Kosa is uncorroborated. It is, therefore, unsafe to rely on such evidence.

62. The evidence of Motilal (P.W. 18) of village Kosla regarding distribution of pamphlets Ex. P. 1 and P. 2 in his village is not convincing. As he says, he only came to know from the casual talk of the villagers before the distribution of the pamphlets that they would vote for the P. S. P. and later on in the same casual manner he came to know of the changed attitude of the villagers to vote for the congress candidate. His evidence does not receive corroboration from any other witness and it is, therefore, risky to rely on his evidence.

63. Jainarayansingh (P.W. 19) of Rewapar worked as a canvasser for Respondent No. 2 at the bye-election in question at Rahod Polling centre. As he says, he worked for Respondent No. 2 because he had sentiment and affection for him. Naturally for the same sentiment and affection he appears to have come forward to support this petition. He is thus an extremely interested witness and it is difficult to rely on his evidence.

64. Janakram (P.W. 21) of Naila is illiterate. His evidence has been already examined in connection with the question of printing of pamphlet Ex. P. 1 at the Bharat Printing Press, Raigarh. As already observed, it is difficult to believe the version of such interested witness. He has not mentioned the names of the villages where he said he distributed the pamphlet Ex. P. 1, and there is no corroborative evidence in support of his version. His evidence is, therefore, unreliable.

65. Now remains the evidence of Harprasad (P.W. 22) of Khoksa to be considered. He admittedly worked for the Respondent No. 1 in the bye-election in question and his name is mentioned on page 10 of the Return of Election. Expenses of the Respondent No. 1 as the person to whom some amount was paid in connection with tour for canvassing (*vide* Ex. P. 8). He says that the pamphlet Ex. P. 1 used to be distributed by him and his singing party after the singing of the song relating to Laxmi. But his evidence does not carry conviction. He cannot read or write and according to him just because Ex. P. 1 has got a picture of bullocks and it is of reddish colour he says that this was the pamphlet which was distributed. It is also curious to find that he only knows of this pamphlet although many pamphlets were distributed during the bye-election in question on behalf of both the candidates. He was not summoned and was brought by the petitioner on the day of his evidence before the Tribunal as admitted by him. He have, therefore, come to the conclusion that his evidence is got-up and is not trustworthy.

66. Thus, we find that the evidence of not a single witness out of the 16 witnesses examined by the petitioner regarding the distribution of the pamphlets in question is reliable. Besides, some witnesses have gone to the length of stating that Shri Reshamlal Jangde M.P. was present at the distribution of the pamphlet Ex. P. 2 and they are Tejram (P.W. 7) and Purushottam Prasad (P.W. 15). But we cannot believe them in the face of Shri Reshamlal's version given by him in his evidence as 1st respondent's witness 2 that from before 1st March 1953 to about 7th May 1953 he was at Delhi for the Parliamentary Session. We do not see any reason to doubt the veracity of the statement of Shri Reshamlal and we, therefore, find that the petitioner's two witnesses mentioned above have deliberately told a lie regarding Shri Reshamlal's presence at the time of the Distribution of the pamphlet Ex. P. 2 at their villages.

67. This type of evidence adduced by the petitioner regarding the alleged distribution of the pamphlets in question, either by Respondent No. 1 or by his agents or other persons with his connivance does not convince our mind. Such evidence could be easily fabricated and for the reasons which have already given we think that we are justified in inferring that this is cooked up evidence simply for the purpose of supporting the petition in question. Such shame evidence does not require any rebuttal. But if it is necessary, by the evidence of Respondent No. 1 Shri Lakheshwar (R.W. 1), Harprasad (R.W. 3), Nathuram (R.W. 4) and Madanlal (R.W. 5), the evidence adduced by the petitioner regarding distribution of pamphlets in question has been successfully rebutted. We, therefore, find that the petitioner has failed to prove the distribution of the pamphlets in question in the constituency either by the Respondent No. 1 or by his agents, or by other persons with his connivance.

68. *Issues Nos. 2(b), (c) and (d).*—These issues do not arise for decision in view of our finding on the question of issue and distribution of the pamphlets in question. But we are discussing these questions on the assumption that the pamphlet Ex. P. 1 to which these issues relate was issued and distributed by or under the authority or with connivance of Respondent No. 1.

69. The question in substance in this connection is as to what is the meaning of the word 'Laxmi' used in the pamphlet Ex. P. 1 and whether thereby the Respondent No. 1 induced or attempted to induce electors to believe that they or any persons in whom they are interested will become or will be rendered objects of divine displeasure or spiritual censure within the meaning of section 123(2)(ii) of the Representation of the People Act, 1951, or whether thereby general undue influence was exerted on the electors within the meaning of section 123(2) of the Representation of the People Act, 1951. In this connection it is pertinent to note that some of the witnesses examined by the petitioner himself have stated that in Chhattisgarh the bullocks are termed and called as 'Laxmi'. Thus to this extent they have supported the contention of the Respondent No. 1. Therefore, it is necessary to see whether by substituting the word 'bullocks' in place of the word 'Laxmi' in the pamphlet Ex. P. 1, it makes a sensible reading and if it does, it cannot be said thus the word 'Laxmi' is used in it in divine sense only.

70. This pamphlet, after its headings and a couplet, continues with the word "ehich" (this) and just opposite to this word there is a symbol of a pair of yoked bullocks. This is indicative of the fact that the word 'Laxmi' used next to the word 'ehich' refers to the pair of yoked bullocks. The sentence then reads "Ehich laxmi har hamar juwa la sagar din le bahi se" (This laxmi has been bearing for all times our yoke). By substituting the word 'bullocks' in place of 'laxmi' in this sentence it makes a perfectly reasonable meaning, while on the contrary, if 'laxmi' in this sentence is used in the divine sense it makes an absurd meaning as no Hindu would say that Laxmi in the divine sense, i.e., Goddess Laxmi has been bearing a yoke. Then the next sentence is "Aoo, Ehich har ham la ghat utar hi" (and this alone will enable us to cross the river). If this sentence is interpreted with reference to bullocks, it makes quite a good meaning that they will enable the agriculturists to do their work successfully.

71. The pamphlet then continues to say "eti teti me bulave ke layak niye: ela chhode ke layak niya: dhokha hohi" (This is a thing not worthy to be left; it is not worth-while to go else where; otherwise there will be deception or blunder). Here also if the sentence is interpreted by reference to bullocks it makes a quite practical and natural meaning.

72. In the next three sentences in the pamphlet there is admittedly nothing objectionable and they refer to the promises given by the parties and exhortation to the electors to rely on their own labour. Then the alleged objectionable words are "laxmi la jhan chhodi ha: nito, laxmi har tuhu la chhod dihi tau fadihat ho jahi" (Do not forsake Laxmi, otherwise Laxmi will forsake you

and then you will suffer harassment or misfortune). The use of the words bullocks in place of the word 'Laxmi' in these sentences also makes a proper meaning for the electors most of whom are agriculturists. Even if the word 'Laxmi' in these sentences is interpreted in the sense of Goddess Laxmi, there is nothing in it to indicate the threat of divine displeasure or spiritual censure because the words "*fadihat ho jahi*" only mean material loss and they do not mean spiritual calamity.

73. The pamphlet then contains a couplet seeking the benediction of gods and goddesses. But there is nothing in this pamphlet to show that by voting for the bullock symbol, the electors would get the blessings of gods and goddesses. There is obviously no meaning of divine displeasure or spiritual censure in this couplet. The last sentences which are objected to are "*eti tei la chhod do, abga laxmi cha peti me bhot do*" (Leave all else and now please give vote only in the Laxmi box). If the word bullocks is used in place of 'Laxmi' in these sentences, they make a sensible meaning.

74. Another meaning of the word 'Laxmi' is wealth. If, therefore, the word 'laxmi' used in pamphlet Ex. P-1 is interpreted to mean as wealth, the pamphlet makes an understandable and reasonable meaning and the whole pamphlet then becomes an appeal to the agriculturists in the name of bullock symbol, the voting for which would add to their wealth and prosperity in the material sense and the nonvoting for the symbol would bring poverty.

75. Thus, in any case, it cannot be said that the use of the word 'Laxmi' in this pamphlet is made only in the sense of Goddess Laxmi. Even if it is assumed that it is used in that sense, there is nothing in our view in this pamphlet to indicate divine displeasure or spiritual censure and some of the witnesses examined by the petitioner did not understand it in that sense.

76. It is, however, true that the majority of the voters in the constituency, as stated by many of the witnesses examined by the petitioner, are illiterate, backward and religious-minded and believe in gods and goddesses. But as the pamphlet in question does not in our view contain a threat of spiritual censure or divine displeasure, it cannot be said that it had or was likely to produce any undue influence or spiritual undue influence on them.

77. Thus, the petitioner has failed to prove the major corrupt practice of undue influence or of spiritual undue influence by the Respondent No. 1 or any of his agents or any other person with his connivance by issue and distribution of pamphlet Ex. P. 1 as alleged by him within the meaning of section 123(2) or section 123(2)(ii) of the Representation of the People Act, 1951. Our findings on issue Nos. 2(b) and (c) are, therefore, in the negative and on issue No. 2(d) in the affirmative.

78. *Issue No. 3(a), (b) and (c).*—These issues relate to the pamphlet Ex. P. 2. We have already held that no such pamphlet was issued by the persons who purport to be its signatories and it was not distributed. In this view, these issues do not arise for decision. But assuming that such a pamphlet was issued and distributed by or under the authority or with connivance of Respondent No. 1, it is necessary to consider whether it amounts to a systematic appeal to vote and refrain from voting on the ground of caste, race, or community for the furtherance of the prospects of the respondent No. 1's election within the meaning of section 124(5) of the Representation of the People Act, 1951.

79. In this connection it is pertinent to note that the pamphlet in question relates to Harijans and none of the contesting candidates is a Harijan. Therefore, the appeal in question cannot amount to an appeal to vote on the ground of caste or community or race. We think that the systematic appeal in section 124(5) *ibid* refers to the caste, community, race or religion of a candidate only and not of the electors. In our view, any caste, race or community can unite and decide to vote for a person belonging to different community, caste or race. But they cannot do so on the ground that the candidate belongs to their caste, race or community. There was, therefore, nothing objectionable in an appeal made to the Harijans to prefer one of the two candidates in the bye-election in question who do not belong to their caste, community or race.

80. It is, however, said that the said pamphlet contained false assertions that it was the Congress Party which had given to the Harijans the right of becoming members to various Legislatures and that the amenities or the rights provided by the Government for the Harijan community were given by the Congress. In this connection, the petitioner has examined 4 witnesses *viz.* Shri Ganeshram Anant (P.W. 25) and Shri Vedram, Mahant Anjoradas and Mahant Naindas

M.L.As, and Respondent No. 1 has examined Shri Reshamlal Jangde. All of them are Harijans. Shri Reshamlal Jangde (R.W. No. 2) says that Congress has done Harijan uplift work and some Harijans have become ministers in Government, because they were the members of the Congress Party and with the help of the Congress, the Harijans have been able to secure Government service including service as teachers. He has further added that so far as pamphlet Ex. P. 2 refers to the uplift of the Harijans and facilities given to them by the Congress, he admits their correctness and, he says, he has himself expressed such views on occasions other than the bye-election in question.

81. According to Shri Vedram (P.W. 1) Congress has been doing Harijan uplift work as a matter of declared policy and because the present Government is the Congress Government, it has given facilities and amenities to the Harijans in the matters of service, education, and representation in Legislatures and the Government. Mahant Anjordan (P.W. 2) has also admitted that the facts as stated in the pamphlet in question are correct. Mahant Naindas (P.W. 3) has, however, said nothing on this point.

82. Now remains the evidence of Shri Ganeshram Anant (P.W. 25) Deputy Minister, M.P., to be considered on this point. According to him, Congress through its present Government has given certain facilities to the Harijans, e.g., freeships to Harijan students and employment in Government services. But in his opinion, it is not correct that Congress has given to the Harijans the right of becoming Ministers and members in the Legislatures though it is a fact that the Congress is helping the Harijans in every respect and the Congress Government exempted the Harijan students from payment of fees. He has also added that the Congress organisation through its parliamentary party and through its Government can get these facilities enforced and since the advent of the Congress organisation, uplift of Harijans was one of the items of the Congress policy and the Congress Government acted according to the policy of the Congress organisation in respect of the Harijans.

83. Thus, on the whole, almost all the witnesses examined on the point have stated that the statements made in Ex. P. 2 are substantially correct. In any case, the statements in this pamphlet relate to legitimate political propaganda and matters of public interest and general concern and many of the statements therein are matters of opinion and it does not contain anything in relation to the personal character or conduct of any candidate. It does not, therefore, in our opinion, amount to a corrupt practice of undue influence or of publication of false statements within the meaning of section 123(2) of section 123(5) of the Representation of the People Act, 1951. We, therefore, find on issue No. 3(a) and (b) that the appeal in the pamphlet in question does not fall under section 124(5) or section 123(2) or section 123(5) *ibid* though we find on issue No. 3(c) that it contains an appeal to the Harijans as a community not to vote for Respondent No. 2. The question whether the publication of this pamphlet has materially affected the result of the election does not arise in view of our finding that minor corrupt practice within the meaning of section 124(5) *ibid* is not proved.

84. Issues Nos. 5(b) to (g).—These issues relate to the pamphlet Ex. P. 3 which is a letter purporting to have been signed by Bahoriklal Suryawanshi, M.L.A. under date of 14th September 1951. This Bahoriklal is said to be an Ex. M. L. A. But he has not been examined by the petitioner, though in the list of his witnesses his name appears. We have already found that the printing and distribution of this pamphlet by Respondent No. 1 or under his authority or with his knowledge has not been proved. The Respondent No. 1, cannot, therefore, be held responsible for the publication or distribution of this pamphlet.

85. This pamphlet, however, purport to declare that Shri Bahoriklal was all along supporting the Congress Party and the people should not be misled by any other party. Such kind of propaganda would be legitimate unless it is proved that the statements made therein are, in fact, false and were known and believed to be false by the Respondent, No. 1. But there is nothing on record to show that, as alleged by the petitioner, Shri Bahoriklal had resigned from the Congress Party and had stood as candidate on behalf of the Party of Barrister Chhedilal and Respondent No. 2 in opposition to the Congress candidate in the General Elections held in 1952 from the Janjgir-Pamgarh constituency. In the absence of such evidence, it cannot be said that the statements contained in Ex. P. 3 were known or believed to be false by Respondent No. 1 or that they were reasonably calculated to prejudice the prospects of the election of the Respondent No. 2. The petitioner has not also adduced any evidence to show that in fact any of the electorate were misled by this pamphlet. It cannot, therefore, be said that this pamphlet, in fact, prejudiced the prospects of the election of Respondent No. 2.



86. There is also no evidence to show that Shri Bahoriklal had a large following at the time of the bye-election in question in Janjgir-Pamgarh constituency and that they were misled by this pamphlet and were induced not to cast their votes for Respondent No. 2. It is, however, argued by the learned counsel of the petitioner that there is no specific denial by the Respondent No. 1 in his pleading that the statements in this pamphlet Ex. P. 3 are false and, therefore, he should be deemed to have admitted the said fact. It is pertinent to note in this connection that the Respondent No. 1 has totally denied in his written statement the allegations in this connection in the same form in which they were made. In fact, the petitioner did not make a categorical statement that the statements in Ex. P. 3 were false. All that he stated in his petition in this connection in para. 9(d) was that Respondent No. 1 knew or believed the said statements to be false. Thus, the petitioner having been himself silent on the point, it is not open to him to say that the Respondent No. 1 should have made a specific denial on the point. In these circumstances, the two decisions relied on by the learned counsel of the petitioner, *Rishabhkumar vs. Singhai Motilal* (I. L. R. 1948 Nag. 299 at pages 302-303) and *Govindram vs. Gulabrao* (I. L. R. 1949 Nag. 478 at pages 481-483) do not, in our opinion, apply to the facts of this case.

87. The publication of this pamphlet does not, therefore, amount to undue influence within the meaning of section 123(2) of the Representation of the People Act, 1951. In any case, in our opinion, the statements contained therein are not in relation to the personal character or conduct of Shri Jwalaprasad, the defeated candidate, but they are statements with regard to his public and political career. Besides, as we have already said, it is not proved that it contains statements of facts which are false and that the Respondent No. 1 either believed them to be false or did not believe them to be true and those statements were not reasonably calculated to prejudice the prospects of the election of Shri Jwalaprasad. The publication of the said pamphlet does not, therefore, constitute corrupt practice within the meaning of section 123(5) of the Representation of the People Act, 1951 and we find accordingly.

88. *Issues Nos. 6(b) and (c).*—These issues relate to the pamphlet Ex. P. 4. This is a pamphlet purporting to have been issued by Shri Gajanand Sharma, M. L. A. and President of the Tahsil Congress Committee, Janjgir. We have already found that the issue or distribution of this pamphlet by the Respondent No. 1 or by his agents or by any other persons at his connivance has not been proved. Besides, Shri Gajanand Sharma, whose name appears in the list of petitioner's witnesses has not been examined by the petitioner for reasons best known to him. The petitioner has also not adduced any evidence to show that the statements in the pamphlet Ex. P. 4 are false. In the absence of any such evidence, it cannot, in our view, be said that the Respondent No. 1 knew or believed them to be false.

89. It is, however, true that the pamphlet Ex. P. 4 contains statements to the effect that the persons of the party of Respondent No. 2, who were opposing the Congress candidate, want to revive the *malguzari* and *zamindari* which the Congress had abolished and that if the electors go to their side, they would be ruined. The words "*fir hamar dehe ke chhali har ni bache*" in this pamphlet are used in the figurative sense and if they are read with the contents of the pamphlet which precede these words, they only mean economic ruin and not physical destruction. In this sense the pamphlet does not contain any threat to the electors or any person in whom they are interested with any physical injury or social ostracism or er-communication or expulsion from any cast or community within the meaning of section 123(2)(a)(i) of the Representation of the People Act.

90. It is, however, argued by the learned counsel of the petitioner that there is no specific denial of the Respondent No. 1 in his pleading of the fact that the statements in this pamphlet are false and, therefore, he should be deemed to have admitted the said fact. But for the reasons given in para. 86 above we do not accept this contention. There is, therefore, nothing on record to show that the statements in this pamphlet are in fact false and it cannot, therefore, be said that by these facts the electors were misled and this pamphlet does not also contain any statements in relation to personal character or conduct of Respondent No. 2. It cannot, therefore, be said that the statements in this pamphlet were reasonably calculated to prejudice the prospects of the election of Respondent No. 2 or that they were made with the intention to mislead the electors. In this view the petitioner has failed to prove that the publication and distribution of this pamphlet amounts to major corrupt practice under section 123(2) or section 123(5) of the Representation of the People Act, and we find accordingly.

91. *Issues Nos. 7(b) to (d).*—These issues relate to pamphlet Ex. P. 5 which bears the name of one Maluram Kedia of Akaltara as its author. Maluram of Akaltara (P.W. 6) has, as already stated, denied that this pamphlet was not printed or distributed by him. Respondent No. 1 in his evidence as R.W. No. 1 has also stated that he did not get this pamphlet printed or distributed and that he never came to know that any such pamphlet had been distributed during the bye-election in question. The contention of the learned counsel of the petitioner that in view of the absence of specific denial on the part of Respondent No. 1 that the statements contained in this pamphlet were false, he should be deemed to have admitted that fact, cannot be accepted for the reasons already given by us in para. 86 *supra*.

92. No evidence has been adduced by the petitioner to show that the statements contained in this pamphlet are in fact false. The best evidence on this point would have been of Shri Jwalaprasad to whom these statements relate. But for reasons best known to the petitioner, he has withheld that best evidence from the Tribunal.

93. On the contrary, Maluram Kedia, who is the petitioner's witness has stated in his evidence, that the facts mentioned in this pamphlet are true and he had declared them to be so from the platform. He has also narrated the facts on the basis of which he says that the statements are true. It cannot, therefore, be said that the statements of facts contained in the pamphlet Ex. P. 5 are false or that the Respondent No. 1 knew or believed them to be false.

94. No evidence has been adduced by the petitioner to indicate that by the declaration of a fast which Maluram of Akaltara had admittedly started on 1st May 1953 and ended on 7th May 1953, any of the electors were in fact induced not to vote for the Respondent No. 2 Shri Jawalaprased. In the pamphlet Ex. P. 5, there is only a statement regarding declaration of a fast by Maluram Kedia and such a declaration, in our opinion, does not amount to threatening the electors with an injury. This declaration of fast or the other statements contained in Ex. P. 5, which are not proved to be false, were not, therefore, in our opinion, calculated to induce the electors of the constituency not to vote for the Respondent No. 2 and they did not amount to undue influence within the meaning of section 123(2) of the Representation of the People Act, 1951.

95. The statements in Ex. P. 5 do not also, in our opinion, relate to the personal character or conduct of Shri Jwalaprased and they in fact relate to his public conduct in relation to public affairs. The publication of the statements in Ex. P. 5 does not consequently amount to corrupt practice within the meaning of section 123(5) *ibid* and we find accordingly.

96. It is, however, true that the pamphlet Ex. P. 5 does not bear on its face the name of the printer thereof, but there is the author's name thereon. The author can, therefore, be deemed to be its publisher. To fall under section 125(3) of the Representation of the People Act, the omission should be of the name and address of the printer and publisher and, according to our view, which is fortified by the decision in *L. H. Sugar Factory v. Mota* (A.I.R. 1941 All. 243) "and" here does not mean "or" but "and". So, the mere absence of the name and address of the printer does not amount to illegal practice within the meaning of section 125(3) *ibid*. In any case, the responsibility of the omission of the name and address of the printer in this pamphlet cannot be saddled on the Respondent No. 1 as he or anybody on his behalf is not proved to have printed or published it. Therefore, we find that illegal practice within the meaning of section 125(3) *ibid* is not established.

97. *Issues Nos. 8(a) and (b).*—These issues relate to the assistance of Shri Harprasad Pande, who is said to be Patel of Banari, alleged to have been obtained by the Respondent No. 1 for furthering the prospects of his election. The fact that Shri Harprasad (R.W. 3) was a Patel of Banari at the relevant time is admitted by Respondent No. 1 in his evidence as R.W. No. 1. This fact has also been admitted by Harprasad (R.W. 3) who has stated that he is the Patel of Banari for the last two or three years. The petitioner has also filed a certified copy of the register of Ryotwari Patels of mauza Banari (Ex. P. 7) in which the appointment of Harprasad, son of Kapilnath, (R.W. 3) as Patel is shown to have been made on 7th April 1952. We, therefore, find that Harprasad, son of Kapilnath, Pande, (R.W. 3) was a Patel at the time of the bye-election in question. He is undoubtedly a person serving under the Government of the State of Madhya Pradesh within the meaning of section 123(8) of the Representation of the People Act. We consequently find that he was a Patel serving under the Government of the State of Madhya Pradesh at the relevant time.

98. The important question, however, is whether the Respondent No. 1 obtained his assistance for furthering the prospects of his election. In this connection, it is pertinent to note that Harprasad, son of Kapilnath, of Banari was cited by the petitioner in the list of his witnesses; but the petitioner did not examine him. This fact shows that Harprasad was not willing to support the petitioner's version in this connection. In fact, Harprasad, who was examined by the Respondent No. 1 as his witness as R.W. No. 3 does not support the petitioner and supports the version of the Respondent No. 1.

99. But, the petitioner relies on the entry of payment of Rs. 4 on 2nd May 1953 to Harprasad of Banari for the expenses of the canvassing tour on page 10 of the Return of Election Expenses filed by the Respondent No. 1, of which Ex. P. 8 is a certified copy. As stated by Harprasad (R.W. 3) there was, at the time of the bye-election in question or now, no other person of the name of Harprasad in his village except himself. The petitioner, therefore, contends that the admission of the Respondent No. 1 contained in his Return of Election Expenses regarding the payment to Harprasad of Banari as stated therein is a conclusive proof of the fact that the Respondent No. 1 obtained the assistance of Harprasad Patel of Banari for the furtherance of the prospects of his election.

100. It is, however, pertinent to note that there was no pleading in the petition in question about this admission by the Respondent No. 1 in the return of his Election Expenses. Therefore, in view of the absence of this fact from the pleading of the petitioner, all that was expected from the Respondent No. 1 in his written statement was a denial that he obtained any assistance of Harprasad Pande, the Patel of Banari, and he made this pleading.

101. When, however, the copy of the Return of Election Expenses (Ex. P. 8) containing the alleged admission of the Respondent No. 1 as filed by the Respondent No. 1, Respondent No. 1 can be presumed to have notice of the said admission and he was expected to rebut that evidence. He has in fact adduced evidence to rebut that admission by showing that it was made inadvertently and it is a mistaken admission. As explained by him in his evidence as R.W. 1, he says that entry of payment of Rs. 4 to Harprasad of Banari shown in his Return of Election Expenses refers to Harlalprasad who is now dead and he made the payment to that Harlalprasad himself at Banari and asked one of his workers to intimate to Manoharlal Sharma, his office clerk, of that payment. As further explained by him, he prepared the return from the written account given to him by Manoharlal and this mistake has occurred because he copied out in the return what Manoharlal had written and that is why the name of Harprasad appears in place of Harlalprasad in the Return.

102. The question, therefore, is whether this explanation of Respondent No. 1 should be believed or not. According to Harprasad (R.W. 3), there were two persons by the name Harlal Prasad in his village at the time of the bye-election in question, one Harlalprasad, son of Parashram, a Marwari, who is dead, and another Harlalprasad, son of Durgaprasad who is alive and who belongs to his family. He has also stated that Harlalprasad Marwari was residing in his village, i.e. Banari, for 30 to 35 years before his death and had cultivation as well as shop at Banari and he realised rent from him year before last as the Patel of the village and his brother Ratiram and his widow were still living in Banari.

103. There is no reason why these facts stated by Harprasad (R.W. 3) should not be believed, especially when no evidence has been adduced by the petitioner in rebuttal of these facts and to show that Harlalprasad Marwari was not living at Banari. In view of this evidence which, in our view, is reliable, we find that Harlalprasad Marwari was living at Banari at the time of the bye-election in question.

104. Now remains the question whether, as contended by the Respondent No. 1, Harlalprasad Marwari worked for him during the bye-election in question and not Harprasad son of Kapilnath (R.W. 3) the Patel of Banari. In this connection, Harprasad son of Kapilnath (R.W. 3), who was as already indicated summoned by the petitioner as his witness, has supported the Respondent No. 1 (R.W. 1) and has stated that he never did canvassing of any kind for Respondent No. 1 at the bye-election in question.

105. As against the evidence of these two witnesses, there is on the side of the petitioner the uncorroborated evidence of one Janakram (P. W. 21) of Naila, who says that Harprasad Patel of Banari was working for the Respondent No. 1 during the bye-election in question and along with him he canvassed in villages Banari, Borsala, Tila and Taga. If this were true, the petitioner would have easily found some independent and disinterested persons of these villages who could say that Harprasad, Patel of Banari, canvassed for Respondent No. 1 during

the bye-election in question. But the petitioner could not find any such person and instead he could find only Janakram (P.W. 21) of Naila who is evidently inimical to the Respondent No. 1. We have already discussed the evidence of this witness in connection with the issue and distribution of the pamphlet Ex. P. 1 and we have found that he is an interested witness and after the bye-election in question he has changed his allegiance and turned against the Congress organisation. We, therefore, disbelieve the interested and uncorroborated testimony of this witness in connection with the question of canvassing by Harprasad Patel (R.W. 3) of Banari for Respondent No. 1. On the contrary, we find that the version of Respondent No. 1 given by him as R.W. 1 and Harprasad Patel (R.W. 3) in this connection is probable and reasonable. It is also noteworthy that Harprasad's surname 'Pande' or designation 'Patel' does not appear in the return of Election Expenses in question, though summonses of some other persons appear therein.

106. It is pertinent to note that as laid down by section 31 of the Evidence Act admissions are not the conclusive proof of the matters admitted. The person against whom an admission is proved is at liberty to show that it was mistaken or wrong. An erroneous admission, therefore, does not bind the person making it. It is true that the burden is heavy on the party making it to prove that his admission is untrue. In this case we find that the Respondent No. 1 has successfully discharged this heavy burden and has proved that his admission contained in the Return of Election Expenses regarding Harprasad Banari is mistaken and inadvertently the name of Harprasad was written therein instead of Hari Lalprasad who in fact, and not Harprasad of Banari, worked for him during the bye-election in question. We, therefore, find that the said admission of Respondent No. 1 contained in the Return of Election Expenses is in fact erroneous and it does not operate against the Respondent No. 1. In this view of this question, we find that the petitioner has failed to prove that the Respondent No. 1 or his agent or any other persons with his or agent's connivance obtained the assistance or Harprasad Patel of Banari and committed the major corrupt practice contemplated by section 123(8) of the Representation of the People Act.

107. *Issues Nos. 4(a), (b), 9(a) to (d).*—These issues relate to the part taken by Shri Ganeshrām Anant, Deputy Minister, and Shri Brijlal Biyani, Finance Minister, M.P. in canvassing for the Respondent No. 1 in the bye-election in question. We have already found that Shri Ganeshrām Anant did not issue an appeal as contained in the pamphlet Ex. P. 2. But Shri Ganeshrām Anant (P.W. 25 on commission) has admitted in his evidence that he had been to the Janjgir-Pamgarh constituency in the bye-election in question for canvassing on behalf of the Congress candidate and had toured the constituency extensively for canvassing and had visited Janjgir, Pamgarh and Shivrinarām and at some places he had been with Shri Brijlal Biyani for canvassing during the bye-election in question.

108. Regarding what Shri Ganeshrām Anant spoke while canvassing for the Respondent No. 1, he states that what he said was that the Congress had done much for the benefit of the people and, therefore, they should vote for the Congress candidate. He also admitted that he was present in the political conference at Naila on or about 25th or 26th April 1953 and he and Shri Brijlal Biyani, both, had addressed it and solicited votes for the Congress candidate in the constituency.

109. Regarding Shri Brijlal Biyani, he stated that he only referred to Five Year Plan and explained how it was being worked out by the Government and further said that, in democracy, rulers were produced by ballot boxes and that they were not hereditary as they used to be previously in the days of kings.

110. Similarly, Shri Brijlal Biyani (P.W. 24 on commission) has admitted that he had gone to the Janjgir-Pamgarh constituency to canvass on behalf of the Congress candidate and had addressed a political conference at Naila on or about 25th April 1953 and public meetings at other places on or about 26th or 27th April 1953 and exhorted the voters to vote for the Congress candidate. As to what he spoke, he stated that he said that, in democratic elections, kings were born from ballot boxes and in general elections the ballot boxes had given birth to Congress Kings and the voters had to consider in election in question in what box they should vote. He has further stated that by using the word "Raja" he meant administrator or ruler. He denied that he said that if the electors voted for non-Congress candidate, Respondent No. 2, the progress of the Five Year Plan was bound to be hindered and the ballot box of Respondent No. 1 was in fact the box of the Government.

111. He, however, stated, contrary to the evidence of Shri Ganeshram Anant, that he did not refer to anything about the five year plan in the meetings because it was not the general practice of his election lectures to enter into the present politics or to refer to Government work. But this discrepancy is immaterial and it may be due to wrong impression of Shri Anant or due to lapse of memory of Shri Biyani. Lastly, he stated in his evidence that he went in the Janjgir Pamgarh constituency to canvass for the Respondent No. 1 in the capacity of a Congressman and canvassed there as a Congressman. We do not see any reason to disbelieve the evidence of these two witnesses, and each of them has substantially corroborated the other and the petitioner has failed to rebut their evidence. We, therefore, find that Shri Brijlal Biyani exhorted the voters to vote for Respondent No. 1 but he did not say that in case they voted for the non-Congress candidate, the progress of the Five Year Plan was bound to be hindered and the ballot box of Respondent No. 1 was in fact the box of the Government or that he induced the electors to believe that they would not get the benefit of the Five Year Plan of the Government unless they voted for the Respondent No. 1.

112. Shri Brijlal Biyani, Finance Minister, M.P., and Shri Ganeshram Anant, Deputy Minister, M.P., canvassed for the Congress candidate Respondent No. 1 in the bye-election in question, evidently because they belong to the Congress party. In their capacity as members of the Congress Party it is their legitimate right to canvass for a candidate of their party and they did not, in our opinion, lose that right when they were appointed Ministers. In democratic countries, where the Government is formed on party basis, such a right is freely exercised by the Ministers for supporting a candidate of their political party. There is, therefore, no reason why that right should be denied to the Ministers in India. In our opinion, the manner of canvassing by Shri Brijlal Biyani and Shri Ganeshram Anant for Respondent No. 1, a member of their political party, amounts to legitimate political propaganda for furtherance of the interests of their political party. We do not, therefore, think that by what they stated while exhorting the electors to vote for the Respondent No. 1, a candidate of their party, they exercised undue influence on the electors within the meaning of section 123(2) of the Representation of the People Act, 1951. The presence of the Respondent No. 1 at some of the meetings addressed by Shri Brijlal Biyani and Shri Ganeshram Anant, which they have admitted, does not consequently amount to the connivance of Respondent No. 1, as alleged by the petitioner.

113. It is, however, contended on behalf of the petitioner that it was during the official tour as Deputy Minister that Shri Ganeshram Anant made canvassing for Respondent No. 1 and, therefore, he brought to bear undue influence of his official status on the electors of the constituency to vote for the Respondent No. 1. But Shri Ganeshram Anant has stated that after finishing his Mass Contact tour of Bilaspur which was purely administrative, he started the election campaign. He, however, stated that his tour programme of the election was intimated to the Deputy Commissioner, Bilaspur who did not attend on him throughout the tour and no Government officer attended during the course of his election tour even for security measures and that was not his official tour and he spent from his own pocket for his expenses at the election tour programme. Simply because he gave intimation of his election tour programme to the Deputy Commissioner it cannot be considered to be an official tour. That intimation was probably for the purpose of security measures. There is no reason to disbelieve him in this connection, especially because the petitioner has not been able to adduce any contrary evidence. It is, therefore, clear from his evidence that his election tour was not an official tour and he did not bring to bear undue influence of his official status on the electors of the constituency to vote for the Respondent No. 1, and we find accordingly.

114. So far as Shri Brijlal Biyani is concerned, he says that he did not ask the Government officials to accompany him during the course of his election tour; but they might have made arrangement by way of security measures. There is nothing in his evidence to indicate that his election tour in the Janjgir-Pamgarh constituency was his official tour. It cannot, therefore, be said that he exerted undue influence of his official status on the electors of the constituency when he exhorted them to vote for the Respondent No. 1 in the bye-election in question and we find accordingly. No undue influence was, therefore, practised by him or by Shri Ganeshram Anant on the electors during the election in question within the meaning of section 123(2) of the Representation of the People Act, 1951, and the question of connivance of Respondent No. 1 at such undue influence does not arise.

115. It is, however, strenuously argued by the learned counsel of the petitioner that the canvassing made by Shri Brijlal Biyani, Finance Minister, M.P., and Shri Ganeshram Anant, Deputy Minister, M.P., for the Respondent No. 1 amounts to

corrupt practice within the meaning of sub-section (8) of section 123 of the Representation of the People Act. But this contention based on section 123 *ibid* was not, in our opinion, pleaded in the petition and this provision of law was not in contemplation of the framer of the petition when it was framed, because the facts necessary to constitute this corrupt practice have not been pleaded in the petition.

116. For the proof of corrupt practice contemplated by sub-section (8) of section 123 of the Representation of the People Act, the following facts must be proved:

- (i) There must be obtaining or procuring or abetting or attempting to obtain or procure any assistance for the furtherance of the prospects of the candidate for the election;
- (ii) such obtaining etc. of assistance should be either by a candidate or by his agent or by any other person with the connivance of the candidate or his agent; and,
- (iii) such assistance must be obtained or procured etc. from any person serving under the Government of India or the State Government of any State.

117. These facts have not been pleaded by the petitioner in his petition. It is not, therefore, now open for the petitioner to contend that the canvassing by Shri Brijlal Biyani and Shri Ganeshram Anant for the Congress candidate, the Respondent No. 1, amounts to corrupt practice within the meaning of section 123(8) of the Representation of the People Act and this question does not, therefore, arise for decision.

118. But assuming that this question does arise for decision, it is first necessary to see whether the assistance of Shri Brijlal Biyani and Shri Anant was obtained by the Respondent No. 1 or by his agent or by any other person with the connivance of the Respondent No. 1 or his agent. There is no such evidence on record. On the contrary, the assistance given by Shri Brijlal Biyani and Shri Anant in the election in question was purely by way of volunteering, without any request to them by any person to give such assistance. They were mere volunteers and spontaneous assistance could be legitimately given by them for the furtherance of the prospects of election of a candidate of their own political party and it was in conformity with the Constitutional practice prevailing in all democratic countries as we have already observed. Though as admitted by Respondent No. 1 in his evidence, on arrangements made by him, Shri Biyani and Shri Anant visited Sheorinarayan and Kharod, they did not address the electors there.

119. The question, therefore, whether Shri Brijlal Biyani and Shri Anant are persons serving under the State Government of Madhya Pradesh does not arise for decision. But as this point has been argued we wish to discuss it briefly and record our opinion on it. We think that it is undisputable that they serve the State. We have, therefore, to see whether they serve under the State Government of Madhya Pradesh. In this connection, it is necessary to refer to some provisions of the Constitution of India. According to article 164(1) of the Constitution of India, the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the Governor. Thus the appointment or dismissal of the Ministers is made by the Governor.

120. On their appointment they hold office of profit under the Government of the State according to Article 191(1) (a) and incur a disqualification for membership of the Legislative Assembly. But this disqualification is excluded by Article 191(2) wherein it is laid down that for the purposes of Article 191 a person shall not be deemed to hold an office of profit under the Government of India or under the Government of any State by reason that he is a Minister for the Union of such State. Apart from exclusion provided by Article 191(2) of the Constitution, if they hold office of profit under the Government of the State, there is no reason why they cannot be considered to be persons serving under the Government of the State within the meaning of section 123(8) of the Representation of the People Act.

121. It is pertinent to note in this connection that according to section 123(8), the Central Government can exclude any person from the operation of sub-section (8) *ibid* and similar power is given to the State Government under clause (b) of sub-section (8) *ibid*. But no such declaration by the State Government of Madhya Pradesh regarding the exclusion of its Ministers from the operation of the provisions of sub-section (8) *ibid* has been brought to our notice by either side, evidently because no such declaration by the State Government appears to have been made.

122. The only question which, therefore, remains for consideration in this connection is whether the Ministers are persons serving under the Government of the State. Here the important words are "under the Government" and we have to see what is the meaning of the word "Government" used in this sub-section. In this connection it is pertinent to note that the definition of the word "Government" is not given in the Constitution of India. But it is provided under Article 367 of the Constitution that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

123. The expression "State Government" has been defined in section 3(60)(b) of the Indian General Clauses Act, 1897, as follows:—

"As respects anything done or to be done after the commencement of the Constitution, shall mean, in a Part A State, the Governor, in a Part B State, the Raj Pramukh, and in a Part C State, the Central Government."

Thus, according to this definition the term "Government" as used in the constitution is synonymous with the Governor and the Government means the Governor.

124. This view is also fortified by article 154(1) of the Constitution which lays down that the Executive power of the State shall be vested in the Governor and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution, and according to Article 163(1) of the Constitution, the function of a Council of Ministers is to aid and advise the Governor in the executive of his functions. The article 154(1) of the Constitution is analogous to the provisions of section 49(1) of the Government of India Act, 1935. In *Emperor vs. Shibnath Eamerji* (1945 M.L.J. 325-A.I.R. 1945 P.C. 156), the question arose whether the Home Minister was an Officer subordinate to the Governor within the meaning of section 49(1) of the Government of India Act, 1935, and over-ruling the decision on this point in *Emperor vs. Hemendra Prasad Ghosh* (I.L.R. 1939 Vol. II Cal. 411) it was held by the Privy Council that the Home Minister was an officer subordinate to the Governor. In view of this decision it must be held that Shri Brijlal Biyani and Shri Anant are officers subordinate to the Governor within the meaning of Article 154(1) of the Constitution. As the term Government as we have indicated above, means the Governor, they are persons serving under the Government within the meaning of section 123(8) of the Representation of the People Act, 1951.

125. This view is fortified by the decision in *Emperor vs. Hemendra Prasad Ghosh* (I.L.R. 1939 Cal. 411 Vol. II) in which it was held that the Ministers are not the Government within the meaning of sections 17 and 124A of the Indian Penal Code. This view is not only not affected but receives strong support from the Privy Council decision cited above. It is, however, urged by the learned Counsel of the Respondent No. 1 that in England and other democratic countries the Ministers are regarded as the Government. But that is not the legal meaning but only the popular meaning and popular expression. In law and according to our Constitution, Ministers themselves are not the Government but they are under the Government and their function is only to aid and advise the Governor in the executive of his functions as we have already pointed out. In England, Ministers are the servants of the Crown. But whatever may be the position in other countries, the provisions of our Constitution, in our opinion, unmistakably indicate that the Ministers serve under the Government of the State, which means the Governor of the State, and, therefore, we find that Shri Brijlal Biyani, the Finance Minister and Shri Ganeshram Anant, Deputy Minister, are the persons serving under the Government of the State of Madhya Pradesh within the meaning of section 123(8) of the Representation of the People Act, 1951. But as we have already stated, the other facts necessary to constitute corrupt practice within the meaning of section 123(8) *ibid* have not been pleaded or proved, the petitioner has failed to establish such a corrupt practice committed by Respondent No. 1 or his agents or by any other person with the connivance of Respondent No. 1 or his agents, and we find accordingly.

126. *Issue No. 10.*—Thus, none of the facts alleged by the petitioner and contained in issues Nos. 1 to 9 is proved and, therefore, none of the grounds for declaring election to be void under section 100 of the Representation of the People Act, 1951, is proved.

127. *Issues Nos. 11(a) and (b).*—In view of our findings on the issues Nos. 1 to 10, the election of the Respondent No. 1 cannot be declared void and we find accordingly. The question of declaring the Respondent No. 2 to be duly elected

does not, therefore, arise. But if any corrupt or illegal practice had been proved, the question whether but for the votes obtained by the returned candidate, Respondent No. 1, by such corrupt or illegal practice, the Respondent No. 2 would have obtained a majority of valid votes, would have depended on the nature, efficacy and the extent of the corrupt or illegal practice proved in the case. But such a question does not arise as no corrupt or illegal practice has been proved.

128. *Issue No. 12.*—The result, therefore, is that the petition is dismissed. As the petitioner has failed on almost all the issues in the case, the rule that costs should follow the event must apply and accordingly we order that the petitioner shall bear his own costs and pay to the Respondent No. 1 all costs incurred by him. Pleader's fee is allowed to the extent of Rs. 1,000 for each side, if certified.

(Sd.) T. R. GOSWADE, *Chairman.*

(Sd.) M. BAJPAL, *Member.*

Election Tribunal, Raipur.

*The 22nd October, 1954.*

BY SHRI B. R. MANDLEKAR

E.P. No. 11 of 1953

1. The Petitioner Mahabirprasad as an elector of Janjgir-Pamgarh constituency of Madhya Pradesh State Legislative Assembly has challenged the election of Respondent No. 1, Shri Lakheshwar who has been declared elected at the bye-election held on 3rd May 1953. Petitioner has asked for the relief that respondent Shri Lakheshwar's election be declared void and that Respondent No. 2, Shri Jwala Prasad, medical practitioner, be declared duly elected.

2. The gravamen of the petitioner consists in asserting that the Respondent No. 1, obtained the services of Shri Harprasad Pande of village Banari who is a Patel under the Government of Madhya Pradesh for furthering the prospects of his election and that there have been corrupt practices committed by Respondent No. 1, of undue influence, false propaganda, and obtaining the assistance of the persons serving under the State viz. the Ministers in furtherance of the prospects of election, as falling under various clauses of section 123 of the Representation of the People Act 1951, and systematic appeal on ground of community, as falling under clause 5 of the minor corrupt practice, under section 124 of the Act, and also of illegal practice of issuing circulars having reference to the election, as it does not bear on its face the name and address of the printer and publisher. These minor corrupt practices, and illegal practices have materially affected the result of the election.

3. The Respondent No. 1, Shri Lakheshwar got 13,807 votes and Respondent No. 2, Shri Jwala Prasad got 8,215 votes i.e., 5,592 votes less than Respondent No. 1. The contention of the petitioner is that the result of the election would have been in favour of Respondent No. 2, in as much as but for the votes obtained by Respondent No. 1 by corrupt or illegal practices, Respondent No. 2 would have obtained the majority of the valid votes.

4. The petitioner is an elector entered at number 181 in village Naila (P.C. No. 196 R.I. Circle Janjgir) in the electoral roll of Janjgir-Pamgarh constituency of the Madhya Pradesh State Legislative Assembly. This is proved by the certified copy of the entry of the electoral roll. The finding of issue No. 1 is in the affirmative.

5. *Issue No. 8(a) and (b)*—(a) The evidence on the point consists of an entry in the return of election expenses filed by the Respondent No. 1 as a candidate before the Returning Officer, showing payment of Rs. 4/8/- to Harprasad of Banari on account of propaganda work of election, besides oral evidence on the side of the petitioner. That Harprasad of Banari is the only known person and that he is a Patel under the Abolition of Rights to Proprietary Act. According to Respondent No. 1 this Harprasad is a mistake for Harlal Prasad, which explanation was not given at the stage of pleadings or in reply to the notice served on the respondent for the admission of the document viz., the certified copy of the return of election expenses of Respondent No. 1, showing payment to Harprasad of Banari. It has been conclusively established that Respondent No. 1 obtained the services of Harprasad Patel of Banari in furtherance of the prospects of his election. Testimony of Harprasad and Respondent No. 1 is false and unreliable.



(b) Harprasad Pande has been a Patel at the time of the bye-election when assistance was taken from him by Respondent No. 1 is proved by the document showing entry of Harprasad's name as a Patel and oral evidence of Harprasad himself.

(c) The obtaining of assistance of a person serving under the Government of any State by the candidate is corrupt practice under section 123(8) of the Representation of People Act. Patel is included in the list of persons serving under the Government for the purposes of this clause. Doing propaganda work by a Government servant is not a privilege conferred by section 33(2) of the Representation of People Act 1951. Doing propaganda by a Government servant does not fall in the category of exemptions which are perse excluded from the mischief of section 123(8) of the Act, like subscribing to a nomination paper or acting as a polling agent. The Respondent No. 1 is thus patently guilty of having committed major corrupt practice falling under section 123(8) of the Representation of People Act for obtaining the assistance of Harprasad Patel of Banari in furtherance of prospects of his election. The contention is that Respondent No. 1 would not have knowingly engaged the services of Harprasad; ignorance of law is no excuse. Even the sagacious in trying to commit breaches of law leave unwittingly traces of their foot-prints for serving as twilight to detect the culprit. The entry in the return of election expenses in the name of Harprasad has served this purpose. The election of Respondent No. 1 is thus rendered void without any proof being required of the result being materially affected as it is a major corrupt practice referred to in section 100(2)(b) of the Representation of the People Act 1951, which renders the election void by proof of single corrupt practice falling under section 123 of the Act.

6. *Issues 9 and 4.*—Regarding issues 9 and 4, they arise out of paragraph 10 of the petition. Petitioner's counsel urged that the facts contended by the petitioner necessitate the application of law as contained under section 123(8) and 123(2) of the Representation of the People Act. It is seriously contended on behalf of Respondent No. 1 that there is no pleading in the sense that there is no mention of section 123(8) as regards corrupt practice, referred to in para. 10 of the petition. No new heads of corrupt or illegal practices would be permissible to be added; but it is not necessary to plead law, as a pleading should only contain facts and not law. If the facts alleged and proved bring the case under this or that head of major or minor corrupt practice or illegal practice such jurisdiction to apply law to facts, is not ousted, even under the limited interpretation that could be put on section 83 of Representation of People Act. The petitioner can thus show that the admitted or proved facts make out a case under sections 123(2) and 123(8) of the Representation of the People Act 1951.

7. The admitted and proved facts are that Shri Brijlal Biyani Finance Minister of the Madhya Pradesh State and Shri Ganesh Ram Anant Deputy Minister Madhya Pradesh State toured in the constituency and canvassed for votes for Respondent No. 1. They addressed meetings attended by voters and canvassed for support in the presence of Respondent No. 1. These persons claim to have canvassed because they belong to the Congress organisation, which has set up Respondent No. 1 as a candidate for the bye-election. There is no evidence to connect Respondent No. 1 with the visit of these two Ministers to the constituency being at his instance. Ministers concerned may have felt impelled to visit the constituency as a duty to the Congress Organisation or may have been requested to visit the constituency at any body else's instance but this by itself would not reflect on Respondent No. 1.

8. No doubt, the position of a candidate at an election is like that of a yacht owner. When the owner goes abroad and finds captain and crew there, the very fact that he consents to sail with them makes them perforce his agents for the purpose of sailing the race in accordance with the laws of the course. The substance of the principle of agency is that if a man is employed at the election to get votes or without being employed he is authorised to get you votes, or if although neither employed nor authorised he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense, that if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you. That is clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not in accordance with their wish but which are directly contrary to it. But this law is purest Justice and common sense. [Vide (1906) 5 O'M & H, 178 Great Yarmouth Case]. Political associations which set up candidates are the agents of the candidate for the purposes of the Representation of People Act; its active members are the agents of the candidate. (Vide Shri Mohanlal v. Shri

Trilochansingh and others published in Gazette of India Extraordinary, dated 27th November 1952, page 2495 para. 8(a). Thus both Shri Biyani and Shri Ganeshram Anant by virtue of their having canvassed for votes in the presence of Respondent No. 1 have constituted themselves as agents of respondent under election law.

9. Shri Biyani has stated, "I was a Minister at the time of Champa Janjgir bye-election held in May 1953. I had gone at Champa Janjgir elections to canvass on behalf of the Congress candidate, Shri Ramkrishna Rathor for Champa constituency and Shri Lakheshwar Paliwal for Janjgir-Pamgarh constituency. At some places in the meetings addressed by me the Congress candidates were present. I went there in the capacity of a congressman and canvassed for the Congress candidates. Shri Ganeshram Anant also deposed, "I had been to Champa and Janjgir-Pamgarh constituency's bye-election for canvassing on behalf of Congress candidates. The elections were held in the month of May 1953. At some places I had been with Shri Brijlal Biyani, the Finance Minister for canvassing during elections. My tour programme of the election was intimated to the Deputy Commissioner Bilaspur. During my election tour the respective candidates accompanied me at some place. I was present at the political conference at Naila or Janjgir on or about 25th or 26th April 1953 which was addressed by Shri Brijlal Biyani. I had also addressed the conference. In that conference both myself and Shri Brijlal Biyani solicited votes for the Congress candidates in both the constituencies." Shri Lakheshwar, Respondent No. 1 says "Many Congress workers were working for me in the bye-election in question. They were all responsible workers. Shri Brijlal Biyani had been to my constituency during the bye-election in question. I had arranged for his visit to mauza Kharaud and at my instance he had gone there and the same was the case of his visit to Shivrinarayan. I had not requested Shri Ganeshram Anant to visit my constituency. But he was present with Shri Biyani at Kharaud and Shivrinarayan. Shri Anant delivered a speech at Shivrinarayan and Kharaud about 6 or 7 days before the polling. Shri Anant is M.L.A. Harijan and is now a Deputy Minister of Madhya Pradesh Government. I do not know whether Shri Biyani or Shri Anant made any expenditure in connection with my election. They were touring in my constituency in my private car."

10. The above statements establish beyond doubt that both the Ministers were the persons whose assistance was obtained for the furtherance of the prospects of his election by Respondent No. 1. The Ministers have thus constituted themselves as agents in connection with the election with the knowledge or consent of the candidate, the Respondent No. 1, as canvassers are agents under Election law and particularly of the type of Shri Biyani and Shri Ganeshram Anant.

11. This by itself would not make the conduct of Respondent No. 1 as a conduct of corrupt practice envisaged under clause 8 of section 123 unless Ministers are shown to be persons serving under the State.

12. Under the constitution, Minister is treated as holding an office of profit under article 191 as being held by him under the State. The expression "Under the State" is used in section 123(8) of the Representation of the People Act, 1951. "State" in the constitution means the Governor in Part A States [Vide section 3(60) General Clauses Act, and Article 367 of the constitution and also Bholanath v Krishnachandra Gupta and others VI Election Law Reports page 104 at page 117.]

13. The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him; no doubt the Ministers are there but they are only to aid and advise the Governor. Powers are very nearly the same as were contained in the Government of India Act 1935. This aspect of the case was examined in *Emperor v. Shibnath Banerjee*, reported in 1945 A.I.R. Privy Council 156 at 163, wherein Their Lordships stated, "So far as is relevant in the present case, Their Lordships are unable to accept the suggestion by counsel for respondents that the Home Minister is not an officer subordinate to the Governor. While a Minister may have duties to the Legislature, the provisions of section 51 as to the appointment, payment and dismissal, of Ministers and section 59(3) and (4) of the Act of 1935 and business rules made by virtue of section 59, place beyond doubt that the Home Minister is an officer subordinate to the Governor." The provisions of the Government of India Act 1935, have more or less been reproduced in the constitution (vide Articles 163, 164, 166 and 167). Thus the Ministers are officers subordinate to the Governor i.e., the State.

14. (a) This point was considered in election petition case of Shri Amrchand v. Surendralal Jha and others reported in Gazette of India Extraordinary, dated

10th June 1954 page 941: that decision is clearly erroneous inasmuch as the Tribunal has ignored the definition of the "State" as given in the General Clauses Act and has decided the case on "common parlance" meaning of Government. Even the analogy of Mr. Gladstone's Midlothian campaign of canvassing is inconsistent with the resolution of the House of Commons. "In 1779 the House of Commons resolved that it is highly criminal in any Minister or Ministers or other servants of the Crown directly or indirectly to use the powers of office in the election of representatives to serve in Parliament; and an attempt at such influence will at all times be resented by this House as aimed at its own honour, dignity and independence as an infringement of the dearest rights of every subject throughout the Empire and tending to sap the basis of the free and happy constitution. "Moreover when there is a Statute like the Representation of People Act, 1951, which includes the Ministers under the class of persons serving the State, nothing more is needed to refer for finding out the position of Ministers except the Constitution. There could be exemption for the Ministers from the effects of clause 8 to section 123 of the Act, like Article 191(2), but as long as there is no declaration by the State Government that the provisions of clause 123(8) would not be applicable to the Ministers, they would be hit by the effects of this clause and would be painted with the tar-brush of the entire category of servants of the State. Thus Shri Biyani and Shri Ganeshram Anant answer the description of persons serving the State of Madhya Pradesh. The conclusion is that Respondent No. 1 obtained or procured the assistance of these Ministers for furtherance of prospects of election, by constituting them as canvassers and thus agents as understood under Election Law. The conduct of Respondent No. 1 falls under section 123(8) of the Representation of People Act 1951 and he is found to have committed a major corrupt practice.

14. (b) Regarding the speeches of Shri Biyani and Shri Ganeshram Anant, the exact words, what these witnesses are alleged to have said, are not proved. As stated in section 123(2) any direct or indirect interference or attempt to interfere on the part of a candidate or his agent with the free exercise of any electoral right is undue influence. It is contended on behalf of Respondent No. 1, that even though the Ministers may be Government Servants as understood under section 123(8), still, unless their speeches or canvassing can be described as undue influence the provisions of section 123(2) would not be attracted as there is no prohibition for a Government servant to canvass by himself. The definitions of various corrupt practices show that the Legislature is anxious to keep the election free and pure; any influence that would affect the freedom and purity of elections will come within one or other of the several categories of corrupt and illegal practices. Though the sections purport to define exhaustively several categories of corrupt and illegal practices, "the ingenuity of politicians is such that offences against purity of elections are constantly liable to occur which are not specifically covered by the Statute. It would be a reproach to the law were it powerless to punish them".

15. Undue influence for being hit by section 123(2) would be the same, whether it be by a person serving the State or by any other persons; it must conform to the contents of the definition. No doubt a servant of the State might carry inherent power to exercise undue influence, but unless he transgresses the limits set by definition of undue influence as laid down in section 123(2) of the Act, the mere fact that he is a servant of the State would not by itself constitute undue influence.

16. The policy and theory of election law is that every person upon whom the election franchise is conferred should judge for himself who is the best and preferable candidate and give his vote accordingly. No doubt, undue influence is undue and improper pressure put upon a voter and the consequent incapacity of the voter created thereby from giving valid and effective vote, taking into account the ordinary nerve and courage of a voter to resist such influence. Though it is well known that in the infant State of our Sovereign Democratic Republic, the dearest interests of every citizen is closely connected with the purity of Election Machinery and enforcement of the Election Law, still, the evil of using servants of the State and State Machinery for winning the elections cannot be stopped unless the provisions of the law are supplemented. The existing law only permits the candidate guilty of corrupt practice to be disqualified and so also the servant of the State if his conduct falls under provisions of Election law, apart from the provisions of criminal law.

17. Reading the allegations of the petitioner and proof thereof, against the speeches made by Shri Biyani and Shri Ganeshram Anant, they do not come under the category of undue influence. The conclusions are therefore, that Shri

Brijlal Biyani addressed political conference at Nalla and public meetings at Champa etc. on or about 26th or 27th April; Shri Biyani is not proved to have exhorted the voters that in case they voted for non-congress candidate, progress of five-year plan would be hindered and that the ballot box of Respondent No. 1 was the ballot box of the Government. As no propaganda which would be hit as undue influence was carried on by Shri Brijlal Biyani, no question of connivance by Respondent No. 1 does arise. Similarly Shri Ganeshram Anant did not bring undue influence by his speeches; no question of connivance by Respondent No. 1, in the case of Shri Ganeshram Anant does also arise.

18. *Issues 2, 3, 5, 6, 7.*—These relate to the printing and distribution of pamphlets by Respondent No. 1. It is fairly certain that the pamphlet printed at Raigarh was got printed by Respondent No. 1; the evidence of the Manager of the printing press at Raigarh is quite convincing and hence it cannot but be held that the leaflet was printed by Respondent No. 1; no question of giving the benefit of doubt to Respondent No. 1 does arise. Further the leaflets have been distributed by Respondent No. 1. The leaflets themselves are original documents, no matter whether the original manuscripts are not proved to be in the hand of respondent because the original is not available and lost by the manager of the printing press at Raigarh. The printed leaflet is made by one uniform process and that itself is primary evidence of the documents distributed (*Vide* section 62 of the Evidence Act). Except for the proof of the fact that some of these leaflets do not bear on their face the name of the printer and publisher, there is nothing objectionable as to be hit either by provisions of section 123(2) or 123(5) of the Representation of People Act.

19. The leaflets have been proved to have been distributed by respondent; those of the leaflets which do not bear the name of the printer and publisher are hit by section 123(3) making his conduct an illegal practice. It is contended that the signature on the leaflets should be sufficient to indicate that the same was printed by the signatory. The signature on the leaflets is only an indication that the signatory has issued them; the name of the printer and publisher in section 123(3) has reference to the printing press and that is a separate category of signatures required, for being saved from the guillotine of illegal practice. The finding on issue No. 6(d) is that the pamphlets in question did not bear the name of the printer and publisher thereof.

20. *Issue No. 12.*—Procuring the assistance of Shri Biyani and Shri Ganesh Ram Anant, who are both persons serving under the State, in furtherance of the prospects of election amounts to major corrupt under section 123(8) of the Representation of People Act. Similarly the issuing the leaflets without the name of printer and publisher amounts to illegal practice. By reason of commission of an illegal practice and also by the major corrupt practice of roping in the services of persons who are serving the State the result of the election is materially affected. The election of respondent is rendered void and is set aside.

21. Having set aside the election of Respondent No. 1, the question remains regarding the prayer of the petitioner that Respondent No. 2 should be declared elected. This can be done if it could be shown that but for the votes obtained by corrupt or illegal practice by Respondent No. 1, Respondent No. 2 would have obtained a majority of valid votes. Big guns of canvassers like Shri Biyani and Shri Ganeshram Anant cannot but tilt the scales in favour of Respondent No. 1 to the extent of 2,800 votes which would have gone to Respondent No. 2. There is evidence on record to show that by illegal practice of distributing pamphlets which have no name of printer and publisher and due to distribution of pamphlets printed at Raigarh voters have been influenced to change sides. On this ground Respondent No. 2 would be entitled to be declared elected as a member for Janjgir Pamgarh constituency for Madhya Pradesh Legislative Assembly.

22. There is more cogent reason to arrive at the same result viz. of declaring Respondent No. 2 as duly elected. There are only two candidates in the field out of whom Respondent No. 1's election is declared void; the votes obtained by him should be regarded as thrown away. The Respondent No. 1 by reason of obtaining the services of persons serving the State of Madhya Pradesh viz. the Ministers Shri Biyani and Shri Ganeshram Anant earned the disqualification and it was a sufficient notice to all the electors who voted for Respondent No. 1. Even if the decision of corrupt practice is to be given by the Tribunal, the votes have to be thrown away. (*Vide* Wakefield B & Aust. 317 and Tavistock, 2 P. R. & D 5 and Madras Municipal D. E. C. case No. 107). The voters voting for Respondent No. 1

voted in a perverse manner; moreover the facts of Ministers canvassing for Respondent No. 1 were notoriously known to the voters who voted for the Respondent No. 1. Further if there are only two candidates contesting the election and the election of Respondent No. 1 is declared void the Respondent No. 2 has to be declared duly elected. (*Vide* Raja Harpalsingh V. Pandi Krishna Kant Malviya case No. 53 in Hammod's Election case page 419). There are cases to the contrary but they all relate to the situations when there were more than two duly nominated candidates. There would be no purpose in declaring void the election of a candidate who is guilty of having committed corrupt practice and not declaring the other candidate as duly elected. The constituency has been unrepresented so far by a duly elected candidate as opposed to candidate against whom election petition has once succeeded and who has been held to have committed corrupt practice rendering his election void.

23. The result is that the petition is allowed with costs. The petitioner who is a voter deserves to be awarded his full costs, as he has rendered public service of vindicating the right of the electorate to free and fair election.

24. Under section 99 a duty is cast on the Tribunal to give a finding that corrupt and illegal practice has been committed by the candidate or his agents. There is no hesitation, in finding that Respondent No. 1 has committed the corrupt practice under sections 123(8) and 125(3) and has entailed disqualification for being a member of the Legislature for a period of six years under section 140 of the Representation of People Act, for corrupt practices under section 123(8) and for a period of four years for illegal practice under section 125(3) of the same Act.

25. Similarly Shri Brijlal Biyani and Shri Ganeshram Anant have acted as accomplices of Respondent No. 1 abetting the procurement or obtaining the services of persons serving the State! if they had not abetted the corrupt practice, the conduct of Respondent No. 1 would have remained, at the most, at the stage of attempt. They are the agents under Election Law of ..... Respondent No. 1; no notice is necessary under section 99(1)(a)(i) to Shri Biyani and Shri Ganeshram Anant as they are being dealt with as agents of Respondent No. 1. They are disqualified for a period of six years under section 140 of the Representation of the People Act 1951, from being members of the Legislature of the State. Though regretfully but for maintaining the high tone in elections of removing any additional weight of insignia of State Livery, such orders disqualifying the persons serving the State have to be passed; this can be avoided in future by issuing the declaration exempting the Ministers from the effects of section 123(8) of the Representation of the People Act, 1951, or by the ministers themselves by refusing to play the partisan Role in Elections like any other servant of the State of the Union.

26. The order would be incomplete unless it is recorded that high tone of advocacy was shown by Counsel appearing for both the sides, at all stages.  
*Raipur, Dated 22nd October, 1954.*

(Sd.) B. R. MANDLEKAR, *Member.*

#### ORDER OF THE TRIBUNAL

In terms of the views of the majority of the members of the Tribunal, it is ordered that the petition is dismissed and the petitioner will bear his own costs and will pay to the Respondent No. 1 all the costs incurred by him in the proceedings. Counsel's fee allowed to the extent of Rs. 1,000, for each side, if certified. The amount of Rs. 184/8/- incurred on account of charges for the publication of the petition in the State Gazette will be paid to the State Government of Madhya Pradesh out of the petitioner's security-deposit and the rest of the security-deposit will be payable to the Respondent No. 1 towards his costs.

(Sd.) T. R. GOSEWADE, *Chairman.*

(Sd.) M. BAIPAI, *Member.*

(Sd.) B. R. MANDLEKAR, *Member*

*Dated, the 22nd October, 1954.*

## SCHEDULE OF COSTS

Particulars	Petitioner			Respondent No.1		
	Rs.	a.	p.	Rs.	a.	p.
1. Stamp for application/memo of appeal . . . . .	..			..		
2. Stamp for powers . . . . .	4	0	0	3	0	0
3. Service of . . . . .	29	12	0	..		
4. Pleader's fees on Rs. as per certificate . . . . .	500	0	0	1,000	0	0
5. Commissioner's fee . . . . .	50	0	0	..		
(1) Exhibits . . . . .	1	14	0	1	4	0
(2) Writing Charges . . . . .	..			..		
(3) Miscellaneous Applications . . . . .	1	0	0	3	0	0
6. Diet Money of Witnesses . . . . .	212	0	0	..		
TOTAL . . . . .	798	10	0	1,007	4	0

(Sd.) T. R. GOSEWADE, *Chairman.*(Sd.) M. BAJPAI, *Member.*(Sd.) B. B. MANDLEKAR, *Member.*

[No. 82/11/53/18384.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy.*